

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

* * * * *

UNITED STATES OF AMERICA,)	Case No. 1:04CR00149 DS
Plaintiff,)	
vs.)	MEMORANDUM DECISION AND
LARRY MCKAY MAXFIELD,)	ORDER ADDRESSING MOTION TO
)	SUPPRESS EVIDENCE
Defendant.)	

* * * * *

I. INTRODUCTION

Defendant Larry Maxfield moves to suppress evidence seized from his place of business, his vehicles and his person during a narcotics investigation on September 21, 2004. An evidentiary hearing was held, followed by post hearing briefing.

The relevant facts are these. On September 21, 2004, Agent Tim Barlow ("Barlow") of the Davis Metro Narcotics Strike Force received information from Weber Morgan Narcotics Task Force Agent Watanabe ("Watanabe") regarding information obtained from a confidential informant ("CI #1"). The information was that Defendant and a Wyatt Ercanbrack had purchased four gallons of naptha and xylol at an Ace Hardware store located in Roy, Utah, on August 28, 2004, for the purpose of manufacturing methamphetamine. Barlow, who was aware that these chemicals are commonly used in the

manufacture of methamphetamine, verified the purchase by Defendant that same day by reviewing the Ace Hardware surveillance video.

Barlow also received information from Watanabe about a different confidential informant ("CI #2") who reported that a Cory Jensen, who would be driving a white Dodge truck, was going to meet Defendant at an automotive shop named Pursuer Auto L.L.C. (the "Shop") located at 1867 West 1700 South in Syracuse, Utah, for the purpose of cooking methamphetamine.

Based on this information, officers set up surveillance at the Shop in the evening hours of September 21, 2004. A white truck was observed at the site, but left shortly after surveillance began. People were observed moving behind a privacy fence. As Agent Hernandez approached a nearby insurance business to set up surveillance on the Shop, a black Camaro drove down the street and pulled into the driveway that accessed the Shop and part of the insurance building. The Camaro stopped for several seconds approximately 15 feet from Agent Hernandez. Because he was concerned that the Camaro was connected to the Shop, Agent Hernandez approached a parked car in front of the insurance business as if he were going to leave. The Camaro proceeded to the Shop where it remained for a few moments before leaving. Agent Hernandez made arrangements with the owner of the insurance

business to conduct surveillance from inside that business. Agents Joseph and Howard and Lieutenant Swanson were assisting with surveillance and were located in the parking lot of a professional building east of the Shop when the Camaro drove past the parking area and flashed its lights at Lieutenant Swanson. The Camaro drove away, but came back through the parking area a second time in what appeared to be an effort to illuminate the officers' vehicles.

Agent Howard joined Agent Hernandez at the insurance building. Several minutes later the Camaro pulled up to the Shop and backed up to a door on the east side. The driver of the Camaro opened the trunk and went inside the Shop. Thereafter, a bag either was placed inside the trunk or taken out of the trunk, and a person drove the Camaro past the insurance building with it's lights off and stopped next to a window from which Agents were conducting surveillance. The window of the Camaro was down and Agent Howard identified Defendant as the driver.

Officers also had information that Defendant was associated with a white Honda, which was observed by Agent Joseph driving through the parking lot where his vehicle was parked and proceeding back to where Lieutenant Swanson's vehicle was parked, where it stopped for 20 to 30 seconds.

Agents believed that the Defendant and the driver of the white Honda were conducting counter-surveillance of their activities and were concerned that there could be people inside the Shop who could be moving or destroying evidence.

Agents then advised Barlow and Agent Miya, who were with attorney Mike Direda, of their observations and concerns. Agents were advised to detain Defendant until a search warrant was obtained.

At approximately 10:00 p.m., the Camaro was stopped. Defendant was frisked for weapons, put in handcuffs, placed in the back of a police car and taken to the Clearfield Police Department where he was kept in a holding cell. In Defendant's pocket officers found a small plastic bindle of methamphetamine as well as keys and an alarm key pad to the Shop, which agents would later use to gain entrance to the Shop.

Agent Joseph drove the Camaro back to the Shop so it could be searched after the warrant was obtained. On his way, the white Honda pulled up next to the Camaro and the female driver asked Agent Joseph why he was driving her car. The white Honda was stopped and the driver, Tricia Maxfield, was detained. The Honda

was also driven back to the Shop so that it could be searched after the warrant was signed.

Agents returned to the Shop and were concerned that they had been compromised due to what they believed were counter-surveillance measures. There were vehicles parked in front of the Shop, but because the Shop windows were covered, agents were not able to see inside. Agent Joseph, who was in charge, ordered that the Shop be secured so that any evidence could be preserved from possible destruction and to avoid any harm to officers. Agents entered and searched the Shop for anyone who might be hiding and then waited three to four minutes before they got word that a warrant had been signed. Thirty to forty minutes elapsed from the time Defendant was stopped in the Camaro until agents entered the Shop.

Subsequent to the Shop being searched, Agent Hernandez interviewed Defendant at the Clearfield Police Department after advising him of his Miranda rights. This occurred approximately three hours after Defendant was seized. When questioned about pills that had been found in the Shop, Defendant acknowledged that pills were scattered throughout the Shop and described where pills were located. He stated that he was gathering the pills for other people, but that he was not operating a meth lab. Defendant also

stated that he thought something was going on earlier near the Shop, because he noticed that the computer screen in the insurance business, which was always on and visible through the window, had been turned off.

After advising him of his Miranda rights, Agent Barlow also interviewed Defendant, who admitted that he was collecting the pseudoephedrine pills to give to other individuals for the production of methamphetamine, and that everything in the Shop belonged to him and that Tricia had nothing to do with anything that was going on in the Shop.

After being questioned by the two officers, Defendant was transported and booked into the Davis County Jail at 4:30 a.m., some six and one half hours after he first was detained.

II. DISCUSSION

A. Standing

For purposes of the present motion, the Court is not persuaded by the Government's assertion that Defendant lacks standing to contest the search of the Shop, or the white Honda driven by Tricia Maxfield, or the gold Nissan parked at the Shop. "The proponent of a motion to suppress has 'the burden of adducing facts at the suppression hearing indicating that his own rights were violated by

the challenged search.'" *United States v. Gama-Bastidas*, 142 F.3d 1233, 1238 (10th Cir. 1998) (citation omitted). Here, the Government's own witnesses testified that the Shop belonged to Defendant and that the Shop was Defendant's leased premises. Government witnesses also testified that titles to the subject vehicles were held by Defendant, either individually or jointly in conjunction with Tricia Maxfield. The gold Nissan was also parked at the site acknowledged by officers to be Defendant's business premises. "[A] defendant may establish a reasonable expectation of privacy by presenting evidence of some lawful control or possession of the vehicle." *Id.* at 1239. This Defendant has done. The evidence also supports the conclusion that Defendant's expectation of privacy was objectively reasonable. See *id.*

B. Exigent Circumstances

1. Warrantless Entry of Shop

Defendant asserts that his Constitutional rights against illegal search were violated when officers entered and searched the Shop without a warrant. The Government contends that officers were justified by exigent circumstances in making a warrantless entry into the Shop. Although officers entered the Shop without a warrant, the record reflects that the scope of their search was limited to assuring the no one was hiding inside.

"[A]bsent consent or exigent circumstances, police may not enter a citizen's residence without a warrant." *United States v. Scroger*, 98 F.3d 1256, 1259 (10th Cir. 1996), *cert. denied*, 520 U.S. 1149 (1997). See *O'Rourke v. Hayes*, 378 F.3d 1201, 1206 (11th Cir. 2004) (citation omitted) ("Though physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed, ... its protection extends to any area in which an individual has a reasonable expectation of privacy."). In *United States v. Aquino*, 836 F.2d 1268, 1272 (10th Cir. 1988), the Tenth Circuit articulated four requirements for a permissible warrantless entry when the police fear the imminent destruction of evidence.

An exception to the warrant requirement that allows police fearing the destruction of evidence to enter the home of an unknown suspect should be (1) pursuant to clear evidence of probable cause, (2) available only for serious crimes and in circumstances when the destruction of the evidence is likely, (3) limited in scope to the minimum intrusion necessary to prevent the destruction of evidence, and (4) supported by clearly defined indicators of exigency that are not subject to police manipulation or abuse.

The Government bears the burden of proving that sufficient exigency exists. *Id.* at 1271. In evaluating exigent circumstance the Court should "evaluate the circumstances as they would have appeared to prudent, cautious and trained officers." *United States v. Cuaron*, 700 F.2d 582, 586 (10th Cir., 1983) (internal quotation marks and citations omitted).

Officers claim that they had reason to believe that their presence had been detected due to what they believed were counter-intelligence efforts by Defendant and his girlfriend, Tricia Maxfield. They were concerned that their discovery could have been communicated to others inside the Shop. When officers first arrived to conduct surveillance of the Shop they observed people near the Shop moving around behind a privacy fence. Various vehicles were parked at the Shop, including a white truck, which was consistent with one alleged to be driven by Cory Jensen, identified by CI #2 as someone who was going to assist Defendant with the manufacture of methamphetamine.

However, officers acknowledge that they had no way of knowing whether Jensen or anyone else was inside the Shop because the Shop windows were covered. They had no independent knowledge that any drug contraband was inside the Shop, or, if present, that its destruction was imminent. It also is noteworthy that thirty to forty minutes elapsed from the time Defendant was stopped until officers entered the Shop. Such a lapse in time, in the Court's view, argues against exigency. Had a confederate of Defendant been tipped off about officers' intentions, enough time had expired for any evidence to have been destroyed or removed. Additionally, officers were in the process of obtaining a search warrant, which in fact was obtained minutes after officers entered the Shop.

Under the totality of circumstances, the Court concludes that the Government has failed to prove that the warrantless entry into the Shop by officers was justified by exigent circumstances.

a. *Segura* Analysis

Pursuant to *Segura v. United States*, 468 U.S. 796 (1984), the Government contends that, even if the warrantless entry into the Shop was not justified by exigent circumstances, they were entitled to secure the Shop while they obtained a search warrant. The Court agrees.

Segura examined the issue of whether “an earlier illegal entry ... requires suppression of evidence seized later from a private residence pursuant to a valid search warrant which was issued on information obtained by the police before the entry into the residence.” *Id.*, 468 U.S. at 797-98. The Court held that it did not. In this case issuance of the search warrant was unrelated to the initial warrantless entry. None of the information relied upon to obtain the warrant was related to the initial warrantless entry. The Court, therefore, concludes that evidence obtained from the Shop was seized pursuant to a validly issued search warrant.

2. Warrantless Seizure of Defendant and his Vehicle

Defendant contends that he was illegally stopped and detained and his vehicle unlawfully moved to the Shop for the sole purpose of searching it in an area described in the search warrant.

The Government contends that officers had probable cause to believe that Defendant and his vehicle were associated with a methamphetamine lab based on information from CI's #1 and #2, based on their observations while conducting surveillance, and because they had seen Defendant either place something in, or take something out of, his vehicle's trunk while it was parked at the Shop. These facts, along with the need to prevent Defendant from alerting anyone back at the Shop of the agents' intentions, the Government suggests, constitute exigent circumstances justifying the stop and detention of Defendant. The Court disagrees.

"A warrantless seizure of an automobile and its occupants may be reasonable if predicated on probable cause and exigent circumstances." *United States v. Gama-Bastidas*, 142 F.3d 1233, 1239 (10th Cir. 1998). The Government cites *United States v. Wicks*, 995 F.2d 964, 970 (10th Cir.), *cert. denied*, 510 U.S. 982 (1993), for the proposition that if officers believe that their own lives or the lives of others are at risk, an exigent circumstance is present and a warrantless search can be made. Based on the same

authority, the Government similarly urges that fear that evidence might be destroyed also creates an exigent circumstance as long as that fear is "'supported by clearly defined indications of exigency that are not subject to police manipulation or abuse,'" *Id.* (internal citations omitted).

The Government, however, by its own admission acknowledges that "[w]hen the agents stopped the Defendant they had no way of knowing whether or not he had a methamphetamine lab in his vehicle." Mem. Opp'n at p.11. Besides the information that they received from the two confidential informants, agents only knew that someone either took a bag out of, or put a bag in, the trunk of a black Camaro, and that Defendant and someone in a white Honda behaved in a manner suggestive of surveillance. Officers had not independently ascertained any additional indicia of the presence of drugs or contraband, either at the Shop or within the Camaro. The evidence of exigency is simply insufficient to justify the warrantless seizure and search of Defendant or his automobile.

To have evidence suppressed as the fruit of his unlawful seizure, Defendant must establish both illegal police activity and some nexus between the illegal police activity and the evidence obtained. *United States v. DeLuca*, 269 F.3d 1128, 1132 (10th Cir. 2001). The former being established, the Court looks to see if a

nexus exists between the illegal police activity and the bindle of methamphetamine and his confession while in custody. "In order to show such a factual nexus, at a minimum, [Defendant] must adduce evidence ... showing the evidence sought to be suppressed would not have come to light but for the government's unconstitutional conduct." *DeLuca*, 269 F.3d at 1132 (internal quotation marks and citations omitted). It appears clear that but for his unlawful seizure and search, the bindle of methamphetamine would not have been discovered by police. Additionally, notwithstanding that officers ultimately gave Defendant a Miranda warning, the voluntariness of his confession must be questioned because of his unlawful seizure and detention. Defendant was taken into custody at approximately 10:00 p.m., restrained in handcuffs and transported in a police car to a police station where he was held in a holding cell for almost three hours before being Mirandized and questioned. The overriding consideration in "fruits" cases, according to the Supreme Court, is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). Here it appears clear that Defendant's incriminating statements were "come at" by the exploitation of his unlawful seizure and detention. Under the totality of circumstances, the

Court must conclude that the taint from Defendant's illegal seizure and search had not become sufficiently attenuated so as to permit admission of his incriminating statements.

3. Validity of Warrant

Defendant asserts that the warrant authorizing search of the Shop, and the affidavit in support of the search warrant, were not sufficiently specific and lacked probable cause. Defendant urges that reference to a white Dodge truck in Agent Barlow's affidavit lacked specificity because it failed to include information such as model, license plate number, and lacked detail regarding such things as color, tinted windows, accessories etc. Defendant also contends that the description of items to be seized was overly broad. He further asserts that there is no basis to determine the reliability of the confidential informants referenced in the affidavit.

The decision of the judge issuing a search warrant is to be given great deference. *United States v. Sims*, 428 F.3d 945, 954 (10th Cir. 2005). A court reviewing a search warrant "need only ask whether, under the totality of the circumstances presented in the affidavit, the magistrate judge had a "substantial" basis for determining that probable cause existed". *United States v. Tuter*, 240 F.3d 1292, 1295 (10th Cir.) (internal citation omitted),

cert. denied, 534 U.S. 886 (2001). Probable cause exists when the affidavit "sets forth facts that would lead a prudent person to believe there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Basham*, 268 F.3d 1199, 1203 (10th Cir. 2001), *cert. denied*, 535 U.S. 945 (2002).

The Court concludes that Agent Barlow's affidavit in support of a search warrant provided sufficient information for the issuing judge to conclude that probable cause existed for issuance of the search warrant. Barlow's affidavit recites information from CI #1 that Defendant purchased four gallons of naptha and xylol from Ace Hardware. The veracity of that allegation was independently verified by Agent Barlow when he reviewed the store's security tape. Defendant's suggestion that the purchase of those chemicals was consistent with his operation of an auto body Shop does not discount Agent Barlow's knowledge, that those chemicals are used to make methamphetamine, when coupled with the report of CI #1 and CI #2 that Defendant was intending to manufacture methamphetamine. Barlow's affidavit also recites information from CI #2 that a Cory Jensen, driving a white Dodge truck, would be meeting Defendant at Purser Auto located at 1867 West 1700 South, Syracuse, Utah, to cook methamphetamine. That information was partially independently

verified when the presence of a white truck was observed at the Shop.

Finally, the Court is satisfied that the descriptions in the warrant of the items to be searched and/or seized were sufficiently specific. The warrant clearly describes the Shop and its location, and identifies items to be searched or seized to include, any vehicles associated with the Shop at the time of the execution of the warrant, and controlled substances including specific drug paraphernalia and chemicals used for the manufacturing of methamphetamine.

III. CONCLUSION

For the reasons set forth, Mr. Maxfield's Motion to Suppress is granted in part, and denied in part. Because the Court finds that the seizure and search of his person and his Camaro automobile were unlawful, evidence seized or which is the fruit of those events, specifically the bundle of methamphetamine found on his person and his confession while in custody pursuant to that seizure are suppressed.

Although, the Court finds that the warrantless entry of his place of business was unlawful, the evidence seized from his Shop pursuant to a validly issued search warrant was lawfully obtained

and need not be suppressed. Other than as noted, Defendant Maxfield's Motion to Suppress is denied.

IT IS SO ORDERED.

DATED this 24th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Sam", written in a cursive style.

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

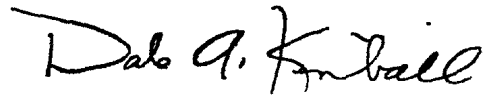
UNITED STATES OF AMERICA,	:	ORDER TOLLING TIME UNDER THE
	:	SPEEDY TRIAL ACT
Plaintiff,	:	
	:	
vs.	:	
	:	Case No. 1:06cr023
DOUGLAS RICHARD SANDERS,	:	
	:	Judge Dale A. Kimball
Defendant.	:	
	:	

On May 12, 2006, defense counsel filed a “Motion to Sever Count I From The Remaining Counts” and “Motion to Suppress Evidence” in the above-mentioned matter. The parties appeared August 23, 2006, before the court to take evidence on the Motion to Suppress. At that time, defense counsel withdrew the motions for additional time to speak with his client and for possible plea negotiations. As a result, a scheduling conference hearing was set for November 16, 2006 at 2:30 p.m.

IT IS HEREBY ORDERED, that all time between May 12, 2006 and November 16, 2006 is tolled under the Speedy Trial Act pursuant to 18 U.S.C. §3161(h)(1)(F).

The Court specifically finds that the ends of justice will be served by the granting of such

continuance and that such action outweighs the best interest of the public and defendant in a speedy trial.

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive, flowing style.

DATED this 24th day of August, 2006

BY THE COURT:

JUDGE DALE A. KIMBALL
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PEDRO MONTOYA-ELIZALDE,

Defendant.

**ORDER CONTINUING
CHANGE OF PLEA**

Case No. 1:06-CR-053DAK

Based on the motion filed by the Defendant and good cause appearing,


IT IS HEREBY ORDERED that the change of plea previously scheduled for August 25, 2006, is hereby continued without date.

Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial.

Accordingly, the time between the date of this order and the new change of plea date set forth in paragraph one above is excluded from speedy trial computation.

DATED this 24th day of August, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Court Judge

FILED
U.S. DISTRICT COURT

2006 AUG 23 P 5:21

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

* * * * *

THE SKULL VALLEY BAND OF
GOSHUTE INDIANS and PRIVATE FUEL
STORAGE, L.L.C.

Plaintiffs,

vs.

DIANNE R. NIELSON, in her official
capacity as Executive Director of the Utah
Department of Environmental Quality, et al.,

and

MICHAEL O. LEAVITT, in his official
capacity as Governor of the State of Utah, et al.

Defendants.

ORDER GRANTING
STIPULATED MOTION TO SET
HEARING DATE ON
PLAINTIFFS' SECOND JOINT
MOTION FOR ATTORNEYS'
FEES

Case No. 2:01CV00270C

Judge Tena Campbell

Magistrate Judge Brooke C. Wells

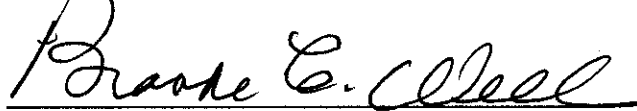
* * * * *

Based on the Stipulated Motion to Set Hearing Date on Plaintiffs' Second Joint Motion
for Attorneys' Fees, and good cause shown,

IT IS HEREBY ORDERED that the stipulated motion is granted. The hearing will be set
for October 5, 2006 at 10:00 a.m.

DATED this 23 day of August, 2006.

BY THE COURT:



HON. BROOKE C. WELLS
UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM:

DATE: August 22, 2006

/s/ William F. Hanson

*(Signed copy bearing signature of William F. Hanson
is being maintained in the office of Vicki M. Baldwin)*

William F. Hanson
Counsel for Defendants

United States District Court
for the District of Utah

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 22 2006

MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

Request and Order for Modifying Conditions of Supervision
With Consent of the Offender
(Waiver of hearing attached)

Name of Offender: **Troy Anthony Brinar**

Docket Number: **2:02-CR-00283-001-PGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**
United States District Judge

Date of Original Sentence: **October 24, 2002**

Original Offense: **Felon in Possession of a Firearm**

Original Sentence: **30 months BOP/36 months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **May 19, 2006**

PETITIONING THE COURT

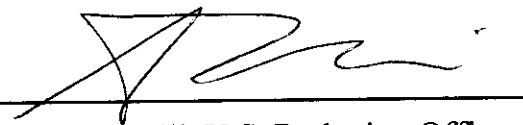
☒ To modify the conditions of supervision as follows:

The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the chief item of order, during the course of treatment or medication.

CAUSE


The defendant was recently evaluated by personnel from Odyssey House who recommended he receive a psychiatric evaluation and subsequent mental health treatment. It is recommended that the defendant's special conditions be modified to include the above mental health condition in order to facilitate the necessary treatment.

I declare under penalty of perjury that the foregoing is true and correct


Matt Morrill, U.S. Probation Officer
Date: August 7, 2006

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other



Honorable Paul G. Cassell
United States District Judge

Date: 8/2/06

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT

AUG 23 2006

DISTRICT OF UTAH, CENTRAL DIVISION

MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA, : : 2:02CR00354 PGC

Plaintiff, : :

vs. : :

KENNETH G. JENKINS, : :

Defendant. : :

ORDER

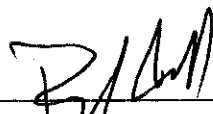
Based on the United States of America's, motion to withdraw Kevin L. Sundwall, Assistant
United States Attorney, appearing therefore, the Court GRANTS the motion, *to remove Mr. Sundwall's*

IT IS SO ORDERED

DATED this 23 day of August, 2006.

*name
from the
case.*

BY THE COURT:



PAUL G. CASSELL
United States District Court Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 23 2006

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

MARY C. CORPORON #734
Attorney for Defendant
CORPORON, WILLIAMS & BRADFORD, P.C.
808 East South Temple
Salt Lake City, Utah 84102
(801) 328-1162

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

ORDER OF WITHDRAWAL

Plaintiff,

-vs-

Case No. 2:02 CR 0354

KENNETH G. JENKINS,

Judge Paul G. Cassell

Defendant.

COUNSEL, MARY C. CORPORON, of and for Corporon & Williams, is hereby
permitted leave to withdraw as counsel for Defendant in the above-captioned action.

DATED this 23rd day of August 2006.

BY THE COURT:



PAUL G. CASSELL
United States District Court Judge

UNITED STATES DISTRICT COURT

AUG 24 2006

MARKUS B. ZIMMER, CLERK
BY Utah
DEPUTY CLERK

Central

District of

UNITED STATES OF AMERICA

V.

Kenneth Jenkins

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Case Number: DUTX202CR000354-001

USM Number: 09618-081

Henri Sisneros

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 1 of the Petition of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
Allegation #1	The defendant has absconded supervision, and his whereabouts are unknown. Evidence in support of this included confirmation from the administrators of the First Step inpatient treatment program that the defendant walked away	3/11/2006

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has not violated condition(s) 2, 3, 4 dismissed and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: 000-00-1604

Defendant's Date of Birth: 10/8/1950

Defendant's Residence Address:

none

Defendant's Mailing Address:

8/23/2006

Date of Imposition of Judgment

[Signature]
Signature of Judge

Paul Cassell

Name of Judge

US District Judge

Title of Judge

Date

8/24/06

DEFENDANT: Kenneth Jenkins
CASE NUMBER: DUTX202CR000354-001

ADDITIONAL VIOLATIONS

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Concluded</u>
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from their facility on March 11, 2006 did not return until the next day

DEFENDANT: Kenneth Jenkins
CASE NUMBER: DUTX202CR000354-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kenneth Jenkins
CASE NUMBER: DUTX202CR000354-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
Remainder of the original term of supervision

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Kenneth Jenkins

CASE NUMBER: DUTX202CR000354-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall successfully participate in and complete an inpatient substance abuse and mental health treatment program.
2. The defendant shall participate in drug and/or alcohol testing as directed by the USPO office and pay a one-time \$115 fee to partially defer the costs of collection and testing.
3. The defendant shall not use or possess alcohol nor frequent businesses where alcohol is the chief item of order.

United States Probation Office
for the District of Utah

Request for Early Termination of Supervision

Name of Offender: **Lori A. Christensen**

Docket Number: **2:03-CR-00855-001-DAK**

Name of Sentencing Judicial Officer: **Honorable Dale A. Kimball**
United States District Judge

U.S. DISTRICT COURT

2006 AUG 24 A 10 25

DISTRICT OF UTAH

BY: DEPUTY CLERK

Date of Original Sentence: **January 29, 2004**

Original Offense: **Possession of Stolen Mail; Burglary of a Post Office**

Original Sentence: **15 Months BOP Custody/36 Months Supervised Release**


Type of Supervision: **Supervised Release** Supervision Began: **February 4, 2005**

SUPERVISION SUMMARY

At this time, the probation office is requesting early termination of supervision. The defendant's scheduled expiration date is February 3, 2008. She has paid all financial obligations to the Court in full, maintained monthly contact, submitted to random urinalysis tests with negative test results, and successfully completed drug/alcohol treatment and mental health treatment. Assistant United States Attorney Samuel Schmidt does not object to an early termination of supervision. If the Court concurs, a Form 35 is attached for signature.

If the Court desires more information or another course of action, please contact me at (801) 535-4252.

I declare under penalty of perjury that the foregoing is true and correct



Richard G. Law
United States Probation Officer
August 21, 2006

Attachment

**Report and Order Terminating Supervised Release
Prior to Original Expiration Date**

UNITED STATES DISTRICT COURT

for the

DISTRICT OF UTAH

UNITED STATES OF AMERICA

v. Criminal No. 2:03-CR-00855-001-DAK

LORI A. CHRISTENSEN

On January 29, 2004, the above-named was placed on supervised release for a period of three years. The defendant has complied with the rules and regulations of supervised release and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.

Respectfully submitted,

Richard G. Law
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 23rd day of August, 2006.

Honorable Dale A. Kimball
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

ORDER GRANTING STIPULATED
MOTION FOR EXTENSION OF TIME

Case No. 2:03CV0294DAK

Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

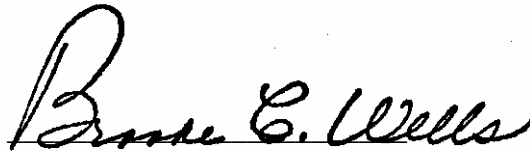
Based on the stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

1. SCO's reply brief re IBM's Memorandum in Opposition to SCO's Objections to Magistrate Judge Wells' Order of June 28, 2006 shall be due on Tuesday, September 5, 2006.

DATED this 24th day of August, 2006.

BY THE COURT

A handwritten signature in black ink, appearing to read "Brooke C. Wells". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Brooke C. Wells
Magistrate Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 23 2006

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

Bryon J. Benevento (5254)
Kimberly Neville (9067)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

Attorneys for Defendants
Dorel U.S.A., Inc. and
Dorel Juvenile Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

AMBER McCALLISTER, parent of ZACHARY McCALLISTER, deceased, Plaintiff, Vs. DOREL INDUSTRIES, INC.; DOREL U.S.A., INC.; DOREL JUVENILE GROUP, INC.; COSCO, INC.; CODY McCALLISTER; and DOES I through X, Defendants.	STIPULATED PROTECTIVE ORDER Case No. 2:03-cv-00427 Judge: Dale A. Kimball
---	--

The parties, by and through their attorneys, and by agreement enter into the following protective order governing the confidentiality of documents produced by the parties during the above-captioned litigation:

IT IS HEREBY ORDERED:

1. This Protective Order shall govern all documents, computer disks, information, and tangible materials which the parties shall designate as "confidential";

2. The parties may specifically designate as "confidential" any documents, information, or materials of a proprietary, financial, or competitively sensitive nature, or which otherwise implicate any recognized privacy interest, by placing in a conspicuous location a stamp bearing the legend "confidential" or the like;

3. Any party may also designate as confidential any portion of a deposition transcript of its agent or employee that it deems to include confidential information;

4. No documents, information or materials designated as "confidential" by another party shall be furnished, shown, or otherwise disclosed to any person unaffiliated with the designating party except the following qualified persons: (1) counsel for the parties, their associate attorneys, paralegal assistants, and clerical employees assisting such counsel and employees; (2) essential employees of the parties with whom it is necessary to consult in connection with the prosecution of this cause; and (3) outside consultants and experts retained by the parties to consult and/or assist counsel in the preparation and trial of this action. All documents, information, and materials that are designated as confidential shall be used solely for the preparation and trial of this action and for no other purpose;

5. Before any person, including the plaintiff to this action, plaintiff's counsel, and plaintiff's counsel's consultants or experts, receives or reviews documents, information, or materials designated as "confidential" by another party, he or she shall be provided with a copy of this Protective Order and shall agree in writing to be bound by its terms by executing a copy of the attached "Acknowledgment." Executors of said Acknowledgment shall be vicariously responsible for any violation of this Protective Order affected by any person who has received or reviewed information from the executor that was designated by another party as "confidential," *and* who has not executed a copy of the attached "Acknowledgment." Said Acknowledgment for any particular expert or consultant shall initially be held by counsel for the parties receiving confidential information and promptly released to counsel for the designating parties when such

expert or consultant is disclosed, receives confidential information if he or she is already disclosed, or at the conclusion of the case, whichever comes first. Counsel for the respective parties shall also maintain a list of each and every person to whom they have disclosed material subject to this Protective Order, with such list available for production to the Court upon an appropriate Order;

6. All copies, reproductions, extracts, and summaries of documents, answers to interrogatories, responses to requests for admission, testimony and other materials and information, as well as briefs and other Court papers that quote or refer to confidential documents, information, or materials shall also be subject to the provisions of this Protective Order;

7. Whenever filed with the Court for any reason, all designated materials disclosed by any party shall be filed with the Court under seal and shall be kept under seal until further order of the Court. However, such designated materials shall continue to be available to the Court and to such persons who are permitted access to the same under this Protective Order. Where possible, only the confidential portions of filings with the Court shall be filed under seal;

8. Nothing contained in this Protective Order shall bar or restrict the parties' attorneys from rendering advice to their respective clients with respect to this litigation. This Protective Order shall not prevent the use of "confidential" documents, information, or materials at a deposition, so long as reasonable advance notice is given to the opposing party that the other party will or may use confidential materials, so that the documents, information, or materials shall be disclosed or displayed only upon the implementation of reasonable safeguards to preserve their confidentiality;

9. The inadvertent or unintentional disclosure of "confidential" information, produced after the effective date of this Protective Order, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a

party's claim of confidentiality either as to specific information disclosed therein or on the same or related subject matter, provided that the party asserting the claim of confidentiality informs the opposing party of its claim within a reasonable time after learning of the disclosure;

10. Materials designated as "confidential" shall not be placed or deposited in any sort of data bank or otherwise be made available to indiscriminate or general circulation to lawyers, litigants, consultants, expert witnesses, or any other persons or entities. This paragraph and the other provisions of this Protective Order shall not apply to materials which, if challenged by another party, the Court rules are not entitled to protection;

11. All parties other than the designating party, including counsel, technical consultants, and/or experts of other parties, shall not sell, offer, advertise, or publicize any information provided and designated as "confidential" by a designating party;

12. Within thirty (30) days of the conclusion of this case, defined as the latest of the completion of the trial and appeals, if any, in this action, or at the satisfaction of any judgment, or upon conclusion of any settlement, if any, the other parties agree to return all CDs and diskettes containing copies of "confidential" documents, information, or materials to the designating party. The parties further agree to return all paper copies of the "confidential" documents, information, and materials, or in the alternative, to destroy all paper copies of the "confidential" information. Each party in receipt of designated documents shall deliver to the designating party an affidavit within thirty (30) days of the conclusion of this case certifying that the CDs and diskettes containing confidential information have been returned, and that all other confidential information and copies thereof, including excerpts from and summaries of such information, have been either destroyed or returned to the party who produced such confidential information. The receiving parties shall further provide, within thirty (30) days of the conclusion of this case, affidavits from each testifying or consulting expert to which they have provided such information, certifying their compliance with this provision;

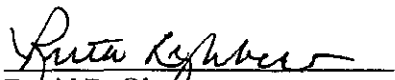
13. If any party elects to challenge a designation of "confidential" made by the other party, the challenging party shall provide written notice to the designating party within thirty (30) days of receipt of the document(s) in question. The notice shall specify the documents, information, or materials for which the designation is challenged, and the basis for the challenge. Thereafter, the provisions of the agreement shall apply to such materials for a period of sixty (60) days only, and shall expire unless the producing party files a motion for protective order from the court prior to such time. In the event such motion is filed, the terms of this Protective Order shall remain in place as to such documents, information, and materials until the Court rules upon the motion;

14. All materials designated as confidential shall be treated as such pursuant to the terms of this Protective Order until further order of this Court. Such a designation raises no presumption that the information or documents are entitled under the law to protection;

15. The determination of how any material designated as "confidential" shall be used at the trial of this case, if any, is not made at this time. Rather, any such determination will be made prior to trial;

16. The terms of this Protective Order shall become effective when it is mutually executed by the respective attorneys for the parties and shall survive and remain in full force and effect after conclusion of this cause of action.

DEWSNUP, KING & OLSEN



David R. Olsen
Ruth Lybbert
Attorneys for Plaintiffs

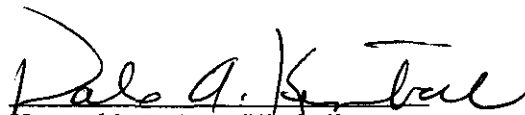
SNELL & WILMER, L.L.P.



Bryon J. Benevento
Kimberly Neville
*Attorneys for Dorel U.S.A., Inc. and
Dorel Juvenile Group*

Dated this 23rd day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball". The signature is written in a cursive style with a large initial "D" and "K".

Honorable Dale A. Kimball
United States District Court Judge

Barton H. Kunz II, Utah Bar No. 8827
bart.kunz@chrisjen.com
Craig V. Wentz, Utah Bar No. 3681
craig.wentz@chrisjen.com
CHRISTENSEN & JENSEN, P.C.
50 South Main Street, Suite 1500
Salt Lake City, Utah 84144
Telephone: (801) 323-5000
Facsimile: (801) 355-3472
Attorneys for Defendants

FILED
U.S. DISTRICT COURT
2006 AUG 24 A 11:12
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

HIGHLAND DEVELOPMENT, INC. *et al.*,

Plaintiffs,

vs.

DUCHESNE COUNTY *et al.*,

Defendants.

Case No.: 2:03CV00750-TC-SA

Judge Tena Campbell

Magistrate Judge Samuel Alba

**ORDER GRANTING MOTION TO
WITHDRAW DEFENDANTS' MOTION
FOR SANCTIONS**

The Court, having considered the defendants' Motion to Withdraw Defendants' Motion for Sanctions, and finding good cause therefor, hereby ORDERS:

That Defendants' Motion for Sanctions is hereby considered withdrawn.

DATED this 23rd day of August, 2006.

BY THE COURT:



Magistrate Judge Samuel Alba
United States District Court for the District of Utah

AUG 21 2006

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MAURICE A. LEE, PLAINTIFF
DEPUTY CLERK

MAURICE A. LEE,

Plaintiff,

v.

WILL CARLSON et al.,

Defendants.

Case No. 2:03-CV-1098 PGC

O R D E R

Plaintiff, Maurice A. Lee, an inmate at the Utah State Prison, filed this *pro se* civil rights suit under 42 U.S.C. § 1983. See 42 U.S.C.S. § 1983 (2006). Plaintiff's motion to proceed *in forma pauperis* under 28 U.S.C. § 1915 was granted. See 28 *id.* § 1915. On November 28, 2005, the Court granted Plaintiff's motion for official service of process, but, due to a miscommunication with the U.S. Marshal's office, service was not carried out until August 3, 2006. In the interim, Plaintiff filed a motion for default judgment which is now before the Court.

Plaintiff's motion asserts that he is entitled to default judgment based on Defendants' failure to timely respond following the Court's order for official service of process. Defendants made a special appearance to defend against the motion for default judgment and asserted that they had not been properly served. Plaintiff has not submitted any evidence to the contrary, in fact, the record shows that due to a

miscommunication with the U.S. Marshal's office service was only recently completed, and Defendants' currently have until August 23, 2006, to file their response. Thus, Plaintiff's motion for default judgment is without merit.

Plaintiff has also filed a motion requesting that he be transported from the prison to be present for any hearings in this case. If, and when, such hearings arise the Court will enter transportation orders as appropriate. However, at this stage of the litigation no such hearings are scheduled or anticipated.

Accordingly, **IT IS HEREBY ORDERED** that:

- (1) Plaintiff's motion for default judgment is **denied**; and,
- (2) Plaintiff's motion for a general transportation order is **denied**.

DATED this 21st day of August, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the District of Utah

Request and Order for Modifying Conditions of Supervision
With Consent of the Offender
(Waiver of hearing attached)

FILED
U.S. DISTRICT COURT
2006 AUG 24 A 10:20

DISTRICT OF UTAH
BY: DEPUTY CLERK

Name of Offender: **Brian Biff Baker**

Docket Number: **2:04-CR-00780-003-DB**

Name of Sentencing Judicial Officer:

Honorable Dee Benson
Chief United States District Judge

Date of Original Sentence: **May 20, 2005**

Original Offense: **Bank Fraud**

Original Sentence: **24 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **August 30, 2006**

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the chief item of order, during the course of treatment or medication.

CAUSE

Mr. Baker reports a long history of mental health issues that have previously been treated with mental health medications. He requests that mental health treatment be added as a condition in order to assist him in successfully completing supervised release.

I declare under penalty of perjury that the foregoing is true and correct

Theresa Del Casale-Merino
United States Probation Officer
August 23, 2006

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other

Dee Benson

Honorable Dee Benson
Chief United States District Judge

Date: 8-23-2006

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by United States Probation Officer Theresa Del Casale-Merino that she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:04-CR-00780-003-DB. The modification would be:


The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the chief item of order, during the course of treatment or medication.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.



Brian Biff Baker



Date



Witness: Theresa Del Casale-Merino
United States Probation Officer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA

Plaintiff,

v.

BEEHIVE BARREL AND DRUM, INC.,
d/b/a CASCADE COOPERAGE, INC., et al.,

Defendants.

ORDER GRANTING MOTION TO AMEND

Case No. 2:04-CV-00570 TC

District Judge Tena Campbell

Magistrate Judge David Nuffer

Plaintiff United States of America (USA) seeks to add a third cause of action against parties who are already in the action directly or as representatives. (proposed Amended Complaint, Exhibit A to supporting memorandum, docket no. 78.) The USA alleges that these parties failed to disclose facts relating to the existing defendants' ownership of property which was not already identified in the complaint.

Defendants claim that the motion to amend is untimely because the USA knew of the ownership of the alleged additional property in 2004-05 and that this ownership was also discussed in a status conference in this case held April 11, 2005. (memorandum in opposition at 2, docket no. 80) The USA disputes these facts. (reply memorandum, docket no. 83). The dispute over disclosure of ownership is the essence of the new proposed claim.

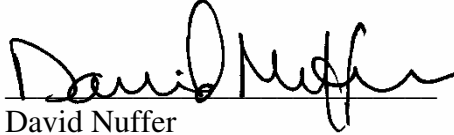
The motion to amend was filed within the time provided in the case schedule (docket no. 62) and will not unduly expand the litigation. The amendment is not futile on its face. The dispute about *knowledge* is the essence of the claim and it deserves adjudication, along with the balance of the claim.

ORDER

IT IS HEREBY ORDERED that the motion to amend (docket no. 77) is GRANTED.

Dated this 24th day of August, 2006.

BY THE COURT

A handwritten signature in black ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer

United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2006 AUG 24 A 10: 20

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT BY: DEPUTY CLERK
DISTRICT OF UTAH – CENTRAL DIVISION

ELF ATHLETICS, LLC, a Utah limited
liability company,

Plaintiff,

vs.

JSR RESEARCH, INC., a Florida
corporation; GARDEN OF LIFE, INC., a
Florida corporation, dba Garden of Life;
JORDAN RUBIN, an individual, and DOES
1 through 10, inclusive,

Defendants.

ORDER

Case No. 2:04CV00748

Judge Dee Benson

Having reviewed the briefing submitted by the parties and the relevant law, the Court
hereby GRANTS plaintiff Elf Athletics, LLC's Motion for Leave to File a First Amended
Complaint.

IT IS SO ORDERED.

DATED this 22nd ^{Aug,} day of ~~July~~, 2006.


Dee Benson
United States District Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 23 2006

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

Jeffrey L. Silvestrini (Bar No. 2959)
Vernon L. Hopkinson (Bar No. 3656)
COHNE, RAPPAPORT & SEGAL, P.C.
257 East 200 South, Suite 700
Salt Lake City, UT 84111
Telephone: (801) 532-2666
Facsimile: (801) 355-1813
Local Counsel for Executive Risk Indemnity Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

EXECUTIVE RISK INDEMNITY INC.

Plaintiff,

v.

CAMERON J. LEWIS, et al.,


Defendants.

ORDER FOR PRO HAC VICE
ADMISSION OF WILLIAM E. SMITH

Civil No. 2:04cv01115 PGC
Judge Paul G. Cassell

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of D.U. Civ. Rule 83-1.1(d), the motion for admission pro hac vice of William E. Smith in the United States District Court of Utah in the subject case is GRANTED.

DATED this 23rd day of August, 2006.


HONORABLE PAUL G. CASSELL
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

**IVAN ASGARD SANCHEZ
QUINTANA,**

Defendant.

ORDER

Case No. 2:05CR153DAK

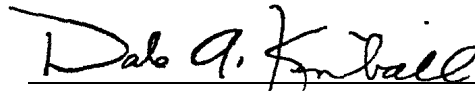
Defendant Ivan Asgard Sanchez Quintana moves this court to amend his sentence on Count I from 18 months to 9 months. The court recommended that Defendant receive credit for time served from March 24, 2005, but the BOP is crediting him for time served from December 6, 2005. Defendant asks for his sentence to be reduced to effectuate this court's recommendation.

The court, however, can only recommend that a defendant receive credit. The BOP determines credit issues, not the district court. *See United States v. Wilson*, 503 U.S. 329 (1992). This court also loses jurisdiction over a case after sentencing and can only act in certain limited situations granted by congress. Defendant's request does not meet any of the criteria for amending a sentence. Moreover, the court cannot usurp the jurisdiction of the BOP by amending a sentence because the BOP does not grant credit for certain time served. This court only makes recommendations as to credit issues. Therefore, Defendant's motion to amend sentence is

DENIED.

DATED this 24th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge

RECEIVED CLERK

UNITED STATES DISTRICT COURT

AUG 23 2006

Central

District of

Utah

U.S. DISTRICT COURT

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V. FILED IN UNITED STATES DISTRICT

Alan Edgar Zenor COURT, DISTRICT OF UTAH

Case Number: DUTX205CR000236-001

AUG 23 2006

USM Number: 12868-081

MARKUS B. ZIMMER, CLERK

BY

Fred Metos

DEPUTY CLERK

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2 of the Indictment.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1)	Possession of Methamphetamine with Intent to Distribute		1
18 U.S.C. §924(c)	Possession of a Firearm in Furtherance of Drug Trafficking		2

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 3 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/22/2006

Date of Imposition of Judgment

Dale A. Kimball

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

August 22, 2006

Date

DEFENDANT: Alan Edgar Zenor
CASE NUMBER: DUTX205CR000236-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

140 months as to count 1 and 60 months as to count 2, to run consecutively for a total of 200 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to FCI Sheridan, OR; if that is not available, then FCI Englewood, CO or Hurlong, CA. The Court strongly recommends that the defendant receive drug abuse treatment if it is available at the facility he is incarcerated in.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Alan Edgar Zenor
CASE NUMBER: DUTX205CR000236-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Alan Edgar Zenor

CASE NUMBER: DUTX205CR000236-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to drug/alcohol testing as directed by the U. S. Probation Office, and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the U. S. Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the U. S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Alan Edgar Zenor
CASE NUMBER: DUTX205CR000236-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Alan Edgar Zenor
CASE NUMBER: DUTX205CR000236-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Jennings 9mm handgun, Serial #1480110

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: Alan Edgar Zenor
CASE NUMBER: DUTX205CR000236-001

ADDITIONAL FORFEITED PROPERTY

See attached Judgment of Forfeiture.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALAN EDGAR ZENOR,

Defendant.

Case #: 2:05CR00236

JUDGMENT OF FORFEITURE

JUDGE DALE A KIMBALL

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 1 and Count 2 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1), the defendant Alan Edgar Zenor shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922, including but not limited to:

- Jennings 9mm Handgun, Serial # 1480110

2. The Court has determined that based on a guilty plea of Possession of a Firearm in Furtherance of Drug Trafficking, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

IT IS FURTHER ORDERED:

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Preliminary Order of Forfeiture is made final as to the defendant and the Judgment of Forfeiture shall be made part of the sentence and included in the judgment.

4. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

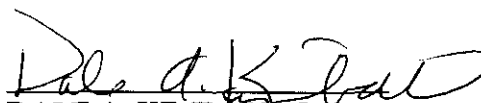
5. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

6. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

7. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 22nd day of August, 2006.

BY THE COURT:


DALE A. KIMBALL, Judge
United States District Court

Pages 8 - 11

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN DAVIS and ANTOYNE V. GILL,

Defendants.

ORDER OF CONTINUANCE

Case No. 2:05CR483 DAK

Honorable Dale A. Kimball

Based upon the motion by defendant, Kevin Davis, and good cause appearing;

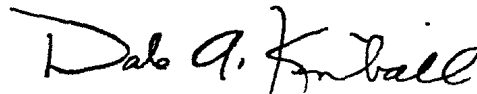
IT IS HEREBY ORDERED that the change of plea hearing set for August 23, 2006, in the above-entitled matter is continued until the 23rd day of January, 2007, at 2:30 p.m.

Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial.

Accordingly, the time between August 23, 2006 and the new hearing date listed above shall be excluded for purposes of speedy trial calculation.

SIGNED this 24th day of August, 2006.

BY THE COURT:



HONORABLE DALE A. KIMBALL
United States District Court Judge

UNITED STATES DISTRICT COURT

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

Central

District of

AUG 24 2006

UNITED STATES OF AMERICA

V.

Darren Brad West

JUDGMENT IN A CRIMINAL CASE

BY STEPHEN B. ZIMMER, CLERK
DEPUTY CLERK

Case Number: DUTX205CR000616-001

USM Number: 12876-081

Richard Mauro

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC § 841(c)(2)	Possession of a List I Chemical, Phosphorus		1
21 USC § 841(c)(2)	Possession of a List II Chemical, Iodine		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/22/2006

Date of Imposition of Judgment

Paul Cassell
Signature of Judge

Paul Cassell

Federal District Judge

Name of Judge

Title of Judge

Date

8/24/06

DEFENDANT: Darren Brad West
CASE NUMBER: DUTX205CR000616-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

108 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The RDAP program and placement in a facility as close to Utah as possible to facilitate family visitation.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 9/22/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Darren Brad West
CASE NUMBER: DUTX205CR000616-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Darren Brad West
CASE NUMBER: DUTX205CR000616-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the USPO and pay a one-time \$115 to partially defer the costs of collection and testing. If testing, reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
2. The defendant shall participate in a mental health treatment program under a co-payment plan as directed by the USPO, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the chief item of order, during the course of treatment or medication.

DEFENDANT: Darren Brad West
CASE NUMBER: DUTX205CR000616-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0.00	\$ _____ 0.00
--------	---------------	---------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Darren Brad West
CASE NUMBER: DUTX205CR000616-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT

2006 AUG 24 A 11: 12

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

BRETT L. TOLMAN, United States Attorney, (#8821)
LANA TAYLOR, Special Assistant United States Attorney (# 7642)
Attorneys for the United States of America
348 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 524-4156

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER TOLLING TIME UNDER THE
	:	SPEEDY TRIAL ACT
Plaintiff,	:	
	:	
vs.	:	
	:	Case No. 2:05cr858 DB
MARK A. ROBLES,	:	
	:	Magistrate Judge Samuel Alba
Defendants.	:	
	:	

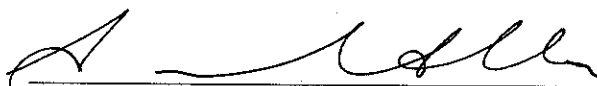
On March 2, 2006, defense counsel filed a "Motion to Suppress, Motion for Evidentiary Hearing and Motion to File Memorandum Following Hearing" in the above-mentioned matter. The parties met on May 23, 2006, and heard evidence on the Motion to Suppress. At that time, the Court continued the matter to June 29, 2006, in order for one of the witnesses to obtain counsel. On June 26, 2006, the parties filed a joint Motion to Continue for additional time to complete their negotiations which could resolve the matter. A Scheduling Conference on July 27, 2006 resulted in the Motion to Suppress being rescheduled for August 21, 2006, at which time the parties met and supplemental discovery was given to defense counsel. The motion was then rescheduled for September 5, 2006 to allow counsel sufficient time to review the new discovery.

The court finds that, based upon these facts, IT IS HEREBY ORDERED, that all time between March 2, 2006 and September 5, 2006 is tolled under the Speedy Trial Act pursuant to 18 U.S.C. §3161(h)(1)(F).

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and defendant in a speedy trial.

DATED this 23rd day of August, 2006

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S. Alba', is written over a horizontal line.

MAGISTRATE JUDGE SAMUEL ALBA
UNITED STATES DISTRICT COURT

ROGER K. SCOWCROFT (5141)
Attorney for Defendant
8 East Broadway, Suite 500
Salt Lake City, UT 84111
Phone (801) 746-2424; Fax (801) 746-5613

FILED
U.S. DISTRICT COURT
2006 AUG 24 A 11:12
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARRERA et al. [JASON NUNLEY],

Defendant.

ORDER EXTENDING
MOTIONS DEADLINE

CASE NO: 2:05 CR 895 DAK

HON. D. A. KIMBALL
MAGISTRATE S. ALBA

Based on Motion of the defendant, Jason Nunley, and for good cause shown, IT IS HEREBY

ORDERED that the deadline to file motions in the above-numbered case is extended to the 22nd

day of Sept., 2006.

DATED this 24th day of August, 2006.

BY THE COURT:



HON. S. ALBA
U. S. Magistrate

MAILED/DELIVERED a copy of the foregoing Order Extending Motions Deadline to the office of the U.S. Attorney, 348 E. South Temple, Salt Lake City, UT 84111, this 23 day of August, 2006.

/s/ Roger K. Scowcroft

FILED
U.S. DISTRICT COURT

2005 AUG 23 P. 5: 21

IN THE UNITED STATES DISTRICT COURT

CENTRAL DIVISION, DISTRICT OF UTAH

DISTRICT OF UTAH

DEPUTY CLERK

MARGARITA JUAREZ,	:	Case No. 2:05CV 53 PGC
Plaintiff,	:	
vs.	:	<u>ORDER</u>
STATE OF UTAH, et al	:	Judge PAUL B. CASSELL
Defendant,	:	Magistrate Judge Brooke C. Wells

Pursuant to the order of the district judge, this case is set for a settlement conference before the undersigned on September 29, 2006, from 10:00 a.m. through 12:00 p.m. The parties will convene in Courtroom No. 436 prior to the Settlement Conference which will be held in the ADR Suite, Room 405, at the U. S. Courthouse, 350 South Main Street, Salt Lake City, Utah.

IT IS HEREBY ORDERED:

Participation of Parties: The litigants are required to be personally present along with counsel if so represented. Counsel is required to have final settlement authority. A litigant with complete settlement authority must be physically present and

participate in the settlement conference for the entire time period.

Case Status Report: Counsel shall meet and confer, and at least ten(10) days before the settlement conference, the parties shall deliver an agreed **case status report** directly to the Magistrate Judge at Room 431, U. S. Courthouse, 350 South Main Street, Salt Lake City, Utah 84101. The agreed case status report shall include the following:

1. A brief statement of the facts of the case;
2. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are founded, and relief sought;
3. A brief statement of the facts and issues upon which the parties agree and a description of the major issues in dispute; and
4. A summary of relevant proceedings to date including rulings on motions and motions outstanding.

Confidential Settlement Conference Statement: At least ten(10) days before the settlement conference, each party shall separately lodge with the Magistrate Judge a **confidential settlement conference statement** including:

- A. A forthright evaluation of the party's likelihood of prevailing on the claims and defenses;
- B. An estimate of the cost and time to be expended for further discovery, pretrial and trial;
- C. Identification of any discrete issues which, if resolved, would aid in the settlement of the case; and
- D. The party's position on settlement, including present demands and offers and history of past settlement discussions, offers and demands.

The **confidential settlement conference statement** should be delivered directly to the Magistrate Judge. Copies of the **confidential settlement conference statement** shall not be filed with the Clerk of the Court, nor served upon the other parties or counsel. The Court and its personnel shall not permit other parties or counsel to have access to these **confidential settlement conference statements**.

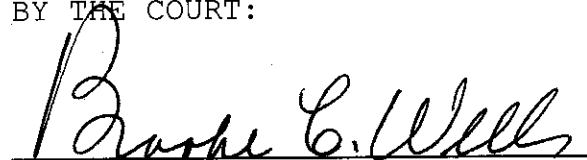
Confidentiality: No report of proceedings, including any statement made by a party, attorney, or other participants in the settlement conference may be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission unless otherwise discoverable.

Pursuant to DUCivR 16-3(d), a written report for the purposes of informing the referring judge whether or not the dispute has been settled is the only permissible communication allowed with regard to the settlement conference. No party will be bound by anything agreed upon or spoken at the conference except as provided in a written settlement agreement. No participant in the settlement conference may be compelled to disclose in writing or otherwise, or to testify in any proceeding, as to information disclosed or representations made during the settlement conference process, except as required by law.

For questions related to the conference, counsel may contact
Chambers, (801) 524-3290.

DATED this 24 day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Brooke C. Wells", written over a horizontal line.

BROOKE C. WELLS
United States Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THE ESTATE OF RICHARD RICCI, and
ANGELA RICCI, an individual,

Plaintiffs,

vs.

CORY MACK LYMAN, an individual,

Defendant.

MEMORANDUM DECISION AND
ORDER ON PLAINTIFFS' MOTION
TO ALTER JUDGMENT

Case No. 2:05-CV-354 TS

On March 20, 2006, Plaintiffs filed a Motion to Alter Judgment¹ relating to a March 8, 2006 Memorandum Decision and Order Denying Plaintiffs' Rule 56(f) Motions for Discovery and for Enlargement of Time to File Response and Granting Defendant's Motion for Summary Judgment ("March 8 Decision").² Plaintiffs cite Fed. R. Civ. P. 59(e) and 60(b), and argue that the Court misapprehended facts and incorrectly applied the law in reaching its decision. Specifically, Plaintiffs point to the Court's reference in the March 8 Decision to a previous but

¹Docket No. 20.

²Docket No. 18. Judgment was rendered in this case on March 9, 2006. Docket No. 19.

related case by Plaintiffs, and argue that the Court incorrectly noted that Plaintiffs' previous case was dismissed for lack of evidence, and that the Court also incorrectly assumed that Plaintiff had more opportunity for discovery in the previous case than Plaintiff actually had. Plaintiffs also appear to argue that there is new evidence in this case.

“[A] motion questioning the correctness of a judgment and timely made within ten days thereof will be treated under Rule 59(e).”³ The Court makes the initial finding that Plaintiffs' motion was timely made within ten days of judgment. A Rule 59(e) motion to alter or amend judgment is essentially a motion for reconsideration.⁴ “Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.”⁵ “Thus, a Motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.”⁶

The Court is not convinced that there are sufficient grounds warranting reconsideration of the March 8 Decision. First, despite Plaintiffs' contentions, the Court notes no misapprehension of the facts in Plaintiffs' case. The Court's characterization of the disposition of Plaintiffs'

³*Dalton v. First Interstate Bank*, 863 F.2d 702, 703 (10th Cir.1988). Plaintiffs' reference to Fed. R. Civ. Pro. 60(b) is therefore inapposite.

⁴*Grider v. Positive Safety Mfg. Co.*, 162 F.R.D. 361, 361-62 (D.Kan.1995) (citing *Henry v. Office of Thrift Supervision*, No. 92-4272, 1993 WL 545195, *1 (D.Kan.1993), *aff'd*, 43 F.3d 507 (10th Cir.1994).

⁵*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

⁶*Id.*

previous case was correct. Moreover, reference to the prior disposition of the case was made for background purposes and, as is evident by the reasoning in the March 8 Decision, did not form the basis for the decision in this case. Also, despite Plaintiffs' contentions, the Court did not misunderstand the extent to which Plaintiffs engaged in discovery in the previous case. Even if the court had so misunderstood, this error would not have changed the outcome of this case.

Plaintiffs also appear to re-argue issues already addressed in the March 8 Decision and the Court notes no misunderstanding or misapplication of law. Further, the alleged new evidence Plaintiffs present was available to Plaintiffs previous to this Court's decision and is wholly irrelevant to the issues which this Court addressed in granting summary judgment.

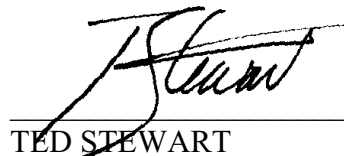
Reconsideration is not needed to correct any clear error or to prevent manifest injustice in this case.

It is therefore

ORDERED that Plaintiffs' Motion to Alter Judgment (Docket No. 20) is DENIED.

DATED August 24, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line.

TED STEWART
United States District Judge

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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BOSS INDUSTRIES, INC. AND JAMES
ATHERLEY,

Plaintiffs,

v.

YAMAHA MOTOR CORPORATION USA,

Defendant.

YAMAHA MOTOR CORPORATION USA,

Counterclaimant,

v.

BOSS INDUSTRIES, INC. AND JAMES
ATHERLEY,

Counterclaim Defendants.

~~PROPOSED~~ ORDER DENYING
PLAINTIFF BOSS INDUSTRIES, INC.'S
RENEWED MOTION FOR FINDING IN
CONTEMPT AND IMPOSITION OF
SANCTIONS

Case No. 2:05CV00422 DAK

District Judge Dale A. Kimball

Magistrate Judge Samuel Alba

This matter is before the Court on Boss Industries Inc.'s ("Boss") Renewed Motion For Finding in Contempt and Imposition of Sanctions ("Renewed Motion for Sanctions"). After having reviewed all applicable pleadings, including but not limited to Boss' Renewed Motion to Compel, Supporting Memorandum and Declaration in Support as well as Yamaha Motor Corporation USA's ("Yamaha") Memorandum in Opposition and Declaration in Support, and conducting a hearing on August 8, 2006, and upon good cause appearing therefore,

IT IS HEREBY ORDERED that the Renewed Motion to Compel is DENIED. The Court further finds that as of August 8, 2006, Yamaha has substantially complied with the Court's May 4, 2006 Order.

DATED this 24th day of Aug -, 2006.


MAGISTRATE JUDGE SAMUEL ALBA
U.S. DISTRICT COURT

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Angela Stander (9623)
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DISTRICT OF UTAH
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,

Plaintiffs,

vs.

YAMAHA MOTOR CORPORATION USA

Defendant

YAMAHA MOTOR CORPORATION USA

Counterclaimant

vs.

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,
Counterclaim Defendants

~~PROPOSED~~ ORDER GRANTING, IN
PART, AND DENYING, IN PART,
PLAINTIFF BOSS INDUSTRIES INC.'S
RENEWED MOTION TO COMPEL
YAMAHA MOTOR CORPORATION USA
TO PROVIDE DESIGNEES FOR ALL
RULE 30(b)(6) DEPOSITION TOPICS

Case No. 2:05CV00422 DAK

U.S. District Judge Dale A. Kimball

Magistrate Judge Samuel Alba

This matter is before the Court on Boss Industries Inc.'s ("Boss") Renewed Motion to

Compel Yamaha Motor Corporation USA to Provide Designees For All Rule 30(b)(6) Deposition Topics ("Renewed Motion to Compel"). After having reviewed all applicable pleadings, including but not limited to Boss' Renewed Motion to Compel, Supporting Memorandum and Declaration in Support as well as Yamaha Motor Corporation USA's ("Yamaha US") Memorandum in Opposition and Declaration in Support, and conducting a hearing on August 8, 2006, and upon good cause appearing therefore,

IT IS HEREBY ORDERED that the Renewed Motion to Compel is GRANTED, in part, and DENIED, in part, as follows:

1. Yamaha US is ordered to provide a Rule 30(b)(6) designee with regard to topics 3, 4, and 21 as listed in the Notice of Deposition of Yamaha Motor Corporation USA Pursuant to Fed. R. Civ. P. 30(B)(6) dated March 22, 2006 (the "30(b)(6) Notice of Deposition of Yamaha");
2. With regard to the portion of the Renewed Motion to Compel requesting that Yamaha US provide a 30(b)(6) designee to testify as to topics 1, 2, 12, 14, 16, 19, 24, 25, 26, 27, and 28 in the 30(b)(6) Notice of Deposition of Yamaha US, this portion of the Motion is granted to the extent that Yamaha US has any employee(s) with knowledge with regard to any of these topics beyond the prior testimony of Yamaha US' corporate representatives in this case, but denied to the extent that Boss seeks to have Yamaha US designate Mr. Ishima or any other representative of YMC to provide 30(b)(6) testimony on behalf of Yamaha US or to require a Yamaha US to acquire the knowledge of YMC for purposes of designating a 30(b)(6) witness;
3. Yamaha US is ordered to produce all documents responsive to Boss Industries' Document Request No. 45. The documents are to be produced subject to the terms of the Protective Order entered in this case;
4. Yamaha US is ordered to produce Madeline Uran for a continuation of her deposition, the scope of which is limited to questions regarding Ms. Uran's e-mail correspondence with Bombardier that was produced to Boss subsequent to her deposition on May 31, 2006 and June 1, 2006;
5. Boss' request for attorneys' fees and costs is denied; and

6. The remaining portions of Boss' Renewed Motion to Compel are denied.

DATED this 24th day of August, 2006.



MAGISTRATE JUDGE SAMUEL ALBA
U.S. DISTRICT COURT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,

Plaintiffs,

vs.

YAMAHA MOTOR CORPORATION USA

Defendant

YAMAHA MOTOR CORPORATION USA

Counterclaimant

vs.

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,
Counterclaim Defendants

~~PROPOSED~~ ORDER GRANTING, IN
PART, AND DENYING, IN PART,
PLAINTIFF BOSS INDUSTRIES INC.'S
MOTION TO COMPEL PRODUCTION OF
ADDITIONAL DOCUMENTS AND
CONTINUED DEPOSITIONS

Case No. 2:05CV00422 DAK

U.S. District Judge Dale A. Kimball

Magistrate Judge Samuel Alba

This matter is before the Court on Boss Industries Inc.'s ("Boss") Motion to Compel Production of Additional Documents and Continued Depositions ("Motion to Compel"). After having reviewed all applicable pleadings, including but not limited to Boss' Motion to Compel, Supporting Memorandum and Declaration in Support as well as Yamaha Motor Corporation USA's ("Yamaha US") Memorandum in Opposition and Declaration in Support, and conducting a hearing on August 8, 2006 and upon good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion to Compel is GRANTED, in part, and DENIED, in part, as follows:

1. Yamaha US is ordered to provide Mr. Marier for a continuation of his deposition, the scope of which is limited to questions regarding the documents produced by Yamaha US on May 26, 2006;

2. With regard to the portion of the Motion to Compel seeking testimony regarding communications with third parties, the issue is addressed by the Court's Order regarding Plaintiff Boss Industries Inc.'s Renewed Motion to Compel Yamaha Motor Corporation USA to Provide Designees For All Rule 30(b)(6) Deposition Topics, and thus, that portion of the Motion to Compel is moot;

3. With regard to the portion of the Motion to Compel seeking notes created by Mr. Sylvester during a conversation with Mr. Chad Johnson, such documents have been produced and, as such, that portion of the Motion to Compel is moot;

4. With regard to the portion of the Motion to Compel seeking the production of documents from the ISMA, that issue is addressed in the Court's Order regarding Plaintiff Boss Industries Inc.'s Renewed Motion to Compel Yamaha Motor Company USA to Provide Designees for All Rule 30(b)(6) Deposition Topics, and thus, that portion of the Motion to Compel is moot;

5. The portion of the Motion to Compel seeking the production of additional financial documents and/or testimony regarding Yamaha US' financial documents is denied. The Court noted that should Boss' damages expert express a need for additional financial

information or documents from Yamaha US, Boss should raise the issue with the Court at that time;

6. Boss' request for attorneys' fees and cost is denied; and
7. All other remaining portions of Boss' Motion to Compel are denied.

DATED this 24th day of August, 2006.


MAGISTRATE JUDGE SAMUEL ALBA
U.S. DISTRICT COURT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,

Plaintiffs,

vs.

YAMAHA MOTOR CORPORATION USA

Defendant

YAMAHA MOTOR CORPORATION USA

Counterclaimant

vs.

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,
Counterclaim Defendants

~~PROPOSED~~ ORDER TAKING UNDER
FURTHER ADVISEMENT PLAINTIFF
BOSS INDUSTRIES INC.'S MOTION TO
BAR DEFENDANT YAMAHA MOTOR
CORPORATION USA FROM RELYING
UPON THE TESTIMONY AND
DOCUMENTS FROM BOMBARDIER
RECREATIONAL PRODUCTS INC. AND
JONATHAN CUTLER

Case No. 2:05CV00422 DAK

U.S. District Judge Dale A. Kimball


Magistrate Judge Samuel Alba

This matter is before the Court on Boss Industries Inc.'s ("Boss") Motion to Bar
Defendant Yamaha Motor Corporation USA From Relying upon the Testimony and Documents

from Bombardier Recreational Products, Inc. and Jonathan Cutler ("Motion to Bar"). After having reviewed all applicable pleadings, including but not limited to Boss' Motion to Compel, Supporting Memorandum and Declaration in Support as well as Yamaha Motor Corporation USA's ("Yamaha US") Memorandum in Opposition and Declaration in Support, and conducting a hearing on August 8, 2006, and upon good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion to Bar is taken under advisement and no ruling is issued at this time. The Court recommends that Boss either request additional documents and/or testimony from Bombardier or serve a subpoena on Bombardier for such documents and testimony.

DATED this 24th day of August, 2006.

A handwritten signature in black ink, appearing to read "S. Alba", is written over a horizontal line.

MAGISTRATE JUDGE SAMUEL ALBA
U.S. DISTRICT COURT

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BY: _____
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,

Plaintiffs,

vs.

YAMAHA MOTOR CORPORATION USA

Defendant

YAMAHA MOTOR CORPORATION USA

Counterclaimant

vs.

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,
Counterclaim Defendants

**~~PROPOSED~~ ORDER GRANTING, IN
PART, AND DENYING, IN PART,
PLAINTIFF BOSS INDUSTRIES INC.'S
MOTION TO COMPEL DEFENDANT
YAMAHA MOTOR CORPORATION USA
TO PRODUCE TAKAHARU ISHIMA FOR
CONTINUED DEPOSITION**

Case No. 2:05CV00422 DAK

U.S. District Judge Dale A. Kimball

Magistrate Judge Samuel Alba

This matter is before the Court on Boss Industries Inc.'s ("Boss") Motion to Compel Defendant Yamaha Motor Corporation USA to Produce Takaharu Ishima for Continued Deposition ("Motion to Compel"). After having reviewed all applicable pleadings, including but not limited to Boss' Motion to Compel, Supporting Memorandum and Declaration in Support as well as Yamaha Motor Corporation USA's ("Yamaha US") Memorandum in Opposition and Declaration in Support, and conducting a hearing on August 8, 2006, and upon good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion to Compel is GRANTED, in part, and DENIED, in part, as follows:

1. Yamaha US is ordered to make Mr. Ishima available for continued deposition, via telephone or video conference means, no later than August 31, 2006, which deposition is limited in time to a total of four hours, exclusive of breaks; and

2. Boss' request for attorneys' fees and cost is denied.

DATED this 24th day of August, 2006.



MAGISTRATE JUDGE SAMUEL ALBA
U.S. DISTRICT COURT

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DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BOSS INDUSTRIES, INC. AND JAMES
ATHERLEY,

Plaintiffs,

v.

YAMAHA MOTOR CORPORATION USA,

Defendant.

YAMAHA MOTOR CORPORATION USA,

Counterclaimant,

v.

BOSS INDUSTRIES, INC. AND JAMES
ATHERLEY,

Counterclaim Defendants.

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' EX PARTE MOTION FOR
LEAVE TO FILE OVERLENGTH
MEMORANDUM IN OPPOSITION TO
DEFENDANT YAMAHA MOTOR
CORPORATION USA'S MOTION FOR
LEAVE TO REOPEN DISCOVERY
REGARDING NEWLY DISCLOSED
EVIDENCE

Case No. 2:05-CV-00422 DAK

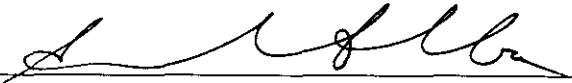
U.S. District Judge Dale A. Kimball

Magistrate Judge Samuel Alba

The Court having considered Plaintiffs Boss Industries, Inc. and James Atherley's ("Boss") Motion for Leave to File an Overlength Memorandum in Opposition to Defendant Yamaha Motor Corporation USA's Motion for Leave to Reopen Discovery Regarding Newly Disclosed Evidence, and finding good cause, hereby **GRANTS** said Motion and **ORDERS** that Boss may file its overlength Memorandum.

IT IS SO ORDERED.

DATED this 24th day of Aug, 2006.


Magistrate Judge Samuel Alba
United States District Court

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

M.D. DIET WEIGHT LOSS AND
NUTRITION CLINIC, L.C., a Utah limited
liability company,

Plaintiff,

vs.

ABSOLUTE WEIGHT LOSS AND
NUTRITION CENTER, LLC, a Utah limited
liability company; and LESLIE CRANMER,
an individual,

Defendants.

ABSOLUTE WEIGHT LOSS AND
NUTRITION CENTER, LLC; LESLIE
CRANMER,

Counterclaimants and Third-Party
Plaintiffs,

vs.

M.D. DIET WEIGHT LOSS AND
NUTRITION CLINIC, L.C.; KELLI BEHLE,
Counterdefendants and Third-Party
Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING THIRD-PARTY
KELLI BEHLE'S MOTION FOR
STAY AND STAYING CASE

Case No. 2:05-CV-605 TS

This matter comes before the Court on Third-Party Defendant Kelli Behle's Motion for Stay, filed July 20, 2006.¹ An opposition² was filed August 7, 2006, and the reply³ was filed August 21, 2006. The instant Motion was set for hearing on August 24, 2006. However, the Court finds that a hearing on this matter is not necessary to its resolution. Having considered the pleadings, the file, the case law, and being otherwise fully informed, the Court will grant the Motion and stay this case pending the resolution of the criminal case against Behle.

I. DISCUSSION

The decision to stay a case is clearly within the discretionary authority of the Court, if the interests of justice so require.⁴ "Federal courts have deferred civil proceedings pending the completion of parallel criminal prosecutions when the interests of justice seemed to require such action"⁵ Although "the Constitution . . . does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings . . . a court may decide in its discretion to stay civil proceedings."⁶

¹ Docket No. 68. The Court notes that the docket incorrectly reflects that this Motion was granted by the Court's August 7, 2006 Order, docket no. 81. To the contrary, the Court disposed of other pending motions in that order, and the instant Motion to Stay was set for hearing.

² Docket No. 80.

³ Docket No. 84.

⁴ See *Tr. of the Plumbers and Pipefitters Nat'l Pension Fund, et al., v. Transworld Mech., Inc., et al.*, 886 F.Supp. 1134, 1138 (S.D.N.Y. 1995).

⁵ *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970) (internal citations omitted).

⁶ *SEC v. Dresser Indust.*, 628 F.2d 1368, 1375 (D.C.Cir. 1980).

In making its determination of whether to grant a stay in this case, the Court considers the six factors set forth in the *Transworld* case:

1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.⁷

As set forth more fully below, the Court finds that all of these factors weigh in favor of granting a stay in this case.

A. Overlap of issues.

Behle is charged in the state criminal case with insurance fraud, unlawful distribution of controlled substances to patients, and false representation as a medical practitioner.⁸ In the Counterclaim and Third-Party Complaint,⁹ Cranmer and Absolute allege that M.D. Diet and Behle “are engaged in the practice of medicine without a license,” and “are engaged in the unlawful practice of providing the services of a physician assistant while not under the supervision of a supervising physician.”¹⁰

⁷ *Transworld*, 886 F.Supp. at 1139 (internal citations omitted).

⁸ See Docket No. 70, at 5.

⁹ Docket No. 24.

¹⁰ *Id.* at 31, ¶¶ 51, 52.

The Court finds that this overlap is significant. Cranmer and Absolute do not deny that the state charges stem from Behle’s operation of the M.D. Diet.¹¹ Although the criminal charges do not touch other issues before the Court in this case, the overlap of these issues – brought by Cranmer and Absolute – is critical. The *Transworld* court noted that “self-incrimination is more likely if there is a significant overlap.”¹²

Accordingly, this factor weighs in favor of granting a stay.

B. Status of criminal case.

Behle has already been criminally charged in the state court system. “A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct for two reasons: first, the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and second, the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act considerations.”¹³

This case does not involve a threat of criminal prosecution but, rather, such action is already underway. The potential for self-incrimination is, consequently, much more real and weighs in favor of a granting a stay.

¹¹ *Id.*

¹² *Transworld*, 866 F.Supp. at 1139.

¹³ *Id.* (internal citations omitted).

C. Balancing of interests.

The Court notes initially that Absolute and Cranmer's argument that the factors contemplate that a civil defendant, not plaintiff, is the party advocating a stay,¹⁴ is misplaced. This issue arises out of Behle's position as the Third-Party Defendant in this case, not a plaintiff. As previously noted, it was Absolute and Cranmer who brought Behle in as a party and made the relevant accusations. Therefore, the factors herein are wholly applicable.

The interests of Plaintiff M.D. Diet and Third-Party Defendants M.D. Diet and Behle are best served by a stay in this matter. Behle has a significant interest in "avoiding the quandary of choosing between waiving [her] Fifth Amendment rights or effectively forfeiting the civil case."¹⁵ This important interest outweighs Cranmer and Absolute's "legitimate interest in the expeditious resolution of their case."¹⁶

A stay will also serve to further interests of Cranmer and Absolute. The Court notes that the threat of a looming Motion for Preliminary Injunction identified by Cranmer and Absolute is now moot, as the Court recently denied that Motion, without prejudice.¹⁷ Resolution of the criminal case may result in a more efficient resolution of this civil case because the scope of discovery may be reduced due to evidence gathered during the criminal prosecution. Moreover,

¹⁴ Docket No. 80, at 9.

¹⁵ *Transworld*, 886 F.Supp. at 1140.

¹⁶ *Id.*

¹⁷ Docket No. 81.

whatever the outcome of the criminal case, the possibility of settlement in this case may be increased.

The Court's interests are also served by the granting of a stay in this case. In addition to the interests of the parties noted above, which also further the interest of the Court, judicial efficiency also calls for a stay. Allowing this case to proceed without full discovery being permitted would be inefficient to both the Court and the parties. Finally, the Court finds that a stay would not harm the public interest, for the reasons just set forth.

Therefore, the Court finds that, considering the factors discussed above, and given the totality of the circumstances, the interests of justice require a stay of his case until the resolution of the criminal case against Behle.

CONCLUSION

Based upon the above, it is hereby

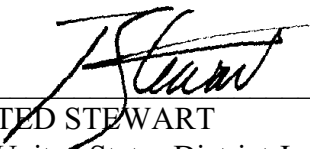
ORDERED that Plaintiff's Motion to Stay (Docket No. 68) is GRANTED. It is further

ORDERED that this case is STAYED pending the resolution of the criminal matter against Third-Party Defendant Behle. The parties are directed to notify the Court in writing within ten (10) days of such a resolution.

SO ORDERED.

DATED August 24, 2006.

BY THE COURT:



TED STEWART
United States District Judge

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

2006 AUG 24 A 10: 23

VICTORIA R. SANCHEZ,

Plaintiff,

vs.

GURUKRUPA,

Defendant.

)

)

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BY:

DEPUTY CLERK

Case No. 2:05CV 829 DS

ORDER

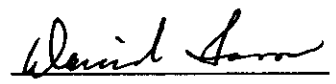
To clarify matters on the docket, the court orders the following. This matter is before the court on the stipulation/motion to amend/correct complaint (Doc. # 9). The parties have filed their first amended complaint and for the reasons expressed in the motion and other good cause shown the court hereby orders that the First Amended Complaint may be filed. The court further notes that

Defendant Gurukrupa's motion for extension of time to file answer (Doc # 2) is moot.

SO ORDERED.

DATED this 24th day of August, 2006.

BY THE COURT:



DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THE WILDERNESS SOCIETY, et al.,
Plaintiffs,

vs.

KANE COUNTY, UTAH, et al.,
Defendants.

ORDER
AND
MEMORANDUM DECISION

Case No. 2:05-CV-854 TC

In 2005, Kane County passed Ordinance No. 2005-03 (“the Ordinance”). The Ordinance opened a large stretch of federal land located in Kane County (“the land”) to off-road vehicle (“ORV”) use. The land had previously been closed to ORV use by federal land managers. According to Kane County, it had the right to change the classification of the land and post open signs because it and the State of Utah have acquired rights-of-way on the land that have become part of the county road system, which is jointly owned and managed by Kane County and the State of Utah.

In response to Kane County’s actions, two environmental organizations, the Wilderness Society and Southern Utah Wilderness Alliance (collectively “TWS”), brought this lawsuit against Kane County and members of Kane County’s Board of Commissioners (collectively “the County”) claiming that the Ordinance is preempted by various federal laws and regulations and therefore violates the Supremacy Clause of the United States Constitution. TWS seeks a declaration that the Ordinance is unconstitutional and an order enjoining the County from

opening the land to ORV use.

The case is before the court on two motions: (1) the County's motion to dismiss the complaint; and (2) TWS's motion to amend the complaint to add two federal agencies as defendants and one cause of action under the Endangered Species Act against the federal agencies.

At the heart of the County's Motion is its contention that TWS is "seek[ing] to eject Kane County and the State of Utah [who is not a party to the lawsuit] from ownership and jurisdiction of public roads [in Kane County]. The relief requested is the functional equivalent of a legal action to quiet title." (Defs.' Mem. Supp. Mot. to Dismiss at 15.) Based on this contention, the County argues that the court does not have subject matter jurisdiction. The County also argues that TWS does not have standing to bring this action. The County raises essentially the same arguments in its opposition to TWS's Motion to Amend the Complaint.

The court disagrees with the County's basic contention primarily because the County has yet to prove that either it or the State of Utah has any right-of-way on the land. Moreover, the court need not make an ownership determination in order to address the Plaintiffs' claims. Accordingly, the court denies the County's motion to dismiss the complaint and also grants TWS's motion to amend the complaint.

FACTUAL BACKGROUND

There are many acres of federal public land in Kane County. The Bureau of Land Management ("BLM") manages about 1.6 million acres of the land and the National Park Service about 400,000 acres. Federal land managers have closed some of the land to ORV travel.

In August 2005, the County passed the Ordinance, titled "Ordinance to Designate and

Regulate the Use of Off-Highway Vehicles” (Kane County Ordinance 2005-3, attached as Ex. 2 to Defs.’ Mem. Supp.) In the Ordinance, “the County claims the right and ownership of all Class B and Class D roads designated on the County Road System” and “has designated all Class B and Class D roads as open, unless designated closed to off-highway vehicle (OHV) use” (Id.) The basis for the County’s assertion of ownership in the roads is the federal statute known as “R.S. 2477.” See Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253, codified at 43 U.S.C. § 932 (“R.S. 2477”), repealed by Federal Land Policy & Management Act of 1976, Pub. L. No. 94-579 § 706(a), 90 Stat. 2743. See also Southern Utah Wilderness Alliance v. BLM, 425 F.3d 735 (10th Cir. 2005) (describing background and history of R.S. 2477). TWS alleges that even before the County passed the Ordinance, the County had removed BLM signs restricting ORV travel on the land and replaced the BLM signs with County signs indicating that the posted routes are open to ORV use.

ANALYSIS

A. Defendants’ Motion to Dismiss

The County’s Motion is primarily a motion to dismiss for lack of subject matter jurisdiction brought under Federal Rule of Civil Procedure 12(b)(1).¹ The County also brings its

¹The parties disagree about the proper standard to be applied in this case. TWS contends that Rule 12(c) is applicable rather than Rule 12(b). TWS further contends that the court must convert the motion to dismiss to a motion for summary judgment under Rule 56. But see Holt v. United States, 46 F.3d 1000, 1002-03 (10th Cir. 1995) (“When reviewing a factual attack on subject matter jurisdiction [under Rule 12(b)(1)], a district court may not presume the truthfulness of the complaint’s factual allegations” but consideration of “evidence outside the pleadings does not convert the motion to a Rule 56 motion.”). Because there is very little dispute about the controlling facts, the parties’ disagreement about the proper standard is of little consequence.

motion under Rule 12(b)(7), contending that the complaint must be dismissed because TWS has failed to join the State of Utah, an allegedly indispensable party.

1. The Supremacy Clause

TWS alleges that the Ordinance violates the Supremacy Clause because it conflicts with and has been preempted by federal laws that regulate ORV use on federal land. According to TWS, a suit claiming violation of the Supremacy Clause raises a federal question and this court has subject matter jurisdiction based on 28 U.S.C. § 1331. The County contends that the suit is in essence a quiet title action over which the court does not have subject matter jurisdiction.

The Supreme Court has made clear that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights: “A Plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve.” Shaw v. Delta Airlines, Inc., 463 U.S. 85, 96 n.14 (1983). More recently, in Verizon Maryland Inc. v. Public Service Comm’n of Maryland, 535 U.S. 635 (2002), the Court stated that “[w]e have no doubt that federal courts have jurisdiction under § 1331 to entertain such a suit [alleging violation of the Supremacy Clause].” Id. at 642.

Similarly, in Qwest Corp. v. City of Santa Fe, New Mexico, 380 F.3d 1258 (10th Cir. 2004), Qwest brought suit challenging an ordinance enacted by the City of Santa Fe that established new procedures for telecommunications providers seeking access to city-owned rights-of-way. 380 F.3d at 1262. Qwest was seeking a declaration that the ordinance was preempted by state and federal laws, and an injunction to prevent the enforcement of the

ordinance. Id. Relying on Shaw and Verizon, the Tenth Circuit rejected the City's argument that there was no federal subject matter jurisdiction, holding that Qwest's claim of preemption provided federal question jurisdiction. Id. at 1264. Further, the court made clear that it was not the federal law that Qwest contended preempted the City's ordinance that gave rise to the right of action, but the Supremacy Clause itself. Id. at 1266. See also ANR Pipeline Co. v. Corp. Comm'n of Oklahoma, 860 F.2d 1571, 1576 (10th Cir. 1988) ("Federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights."); Planned Parenthood of Houston & S.E. Texas v. Sanchez, 403 F.3d 324, 331 (5th Cir. 2005) (listing cases).

2. Eleventh Amendment

There is no dispute that the County, by itself, is not entitled to the protection of the Eleventh Amendment. Alden v. Maine, 527 U.S. 706, 756 (1999) (noting that Eleventh Amendment immunity "does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State"). But the County contends that this case must be dismissed because it is, in reality, a suit against the State of Utah, which is purportedly the owner of the roads at issue in the Ordinance passed in reliance on R.S. 2477. But, other than conclusory assertions, the County has not provided any evidence that either it or the State of Utah has acquired R.S. 2477 rights-of-way over the land. In fact, the County has admitted that there has been no binding judicial determination regarding R.S. 2477 rights-of-way on the land.

Still, the County contends that it need do nothing more than it has already done. According to the County, "[t]he idea that the State and County do not own property rights until adjudication has been conclusively rejected by the Tenth Circuit Court of Appeals." (Defs.'

Reply at 2.) Relying on the Tenth Circuit’s decision in Southern Utah Wilderness Alliance v. BLM, 425 F.3d 735 (10th Cir. 2005), the County maintains that

[t]he State and Counties are free to use and enjoy their roads, including performing routine maintenance of the same, without prior adjudication or federal permission. The basic holding in [Southern Utah Wilderness Alliance] is that rights-of-way are valuable property rights that counties are free to continue to use, manage and enjoy pursuant to their lawful governmental power, without seeking prior permission Only if the surface or path of a road right-of-way is to be improved must there be a consultation with the federal land manager.

(Defs.’ Reply at 3 (internal citations omitted).) The County continued its argument by stating that

[t]his court is well aware of Plaintiffs’ recent unsuccessful attempt to create a prior-determination requirement in R.S. 2477 jurisprudence. [This] idea . . . has been conclusively rejected by the Tenth Circuit Court of Appeals. “Title to an R.S. 2477 right of way . . . passes without any procedural formalities and without any agency involvement.”

(Id. at 2-3 (quoting Southern Utah Wilderness Alliance, 425 F.3d at 753).)

But the language quoted by the County must be read in context. When the Tenth Circuit made the quoted statement, it was answering “the question of whether the district court should have treated this dispute as an appeal of an informal, but legally binding, administrative adjudication, or instead should have treated it as a de novo legal proceeding.” Southern Utah Wilderness Alliance, 424 F.3d at 749. The BLM argued that it had authority to determine the validity of R.S. 2477 claims, thereby limiting judicial review. The Tenth Circuit disagreed and distinguished the case relied upon by the BLM, which dealt with patents on a mining claim. The court pointed out that there were fundamental differences between mining claims, where title passes by way of a patent issued by the BLM, and R.S. 2477 rights-of-way, where the BLM plays no such role. Id. at 754-55.

The issue here is quite different. This dispute raises the question whether the court should accept the County's claim that it has R.S. 2477 rights-of-way on the land without evidence supporting the claim. Even the case relied upon by the County does not support this contention. In Southern Utah Wilderness Alliance, the Tenth Circuit discussed at length "the criteria governing recognition of a valid R.S. 2477 right of way." Id. at 768. First, the court emphasized that the party seeking to enforce rights-of-way against the federal government bears the burden of proof. Id. Then the court explained that "this allocation of the burden of proof to the R.S. 2477 is consonant with federal law and federal interests." Id. at 769. Finally, the court directed that "[o]n remand, therefore, the Counties, as the parties claiming R.S. 2477 rights, bear the burden of proof." Id.

Certainly the County could defend the legality of the Ordinance by attempting to meet its burden to show that it has acquired R.S. 2477 rights on the land. But that has not happened. All the County has done is claim that it has R.S. 2477 rights and assert in its answer to the complaint that it will rely on R.S. 2477 rights as a defense. Therefore, as the litigation now stands, the County has not shown that the State of Utah and the County have an interest in the land.

Finally, the County's argument that this lawsuit is really an action to strip the State of Utah of interests in the land ignores the fact that none of the relief sought by TWS applies to the State of Utah in any way. TWS is seeking a declaration that the Ordinance is unconstitutional and that the County's action in removing federal signs on the land is unconstitutional. TWS further seeks an order directing the County to remove its signs from the land. Finally, TWS has asked the court to enjoin the County from taking any additional action purporting to open the land to ORV use. TWS correctly stated that

this Court need not make any final determination regarding the existence of any R.S. 2477 right-of-way in order to grant TWS's requested relief. It need only determine that the County's ordinance and other actions are preempted by federal law where the County has not made the slightest effort to demonstrate—let alone successfully proven—the existence of even a single right-of-way on the federal land in question. This conclusion need not rest on a determination regarding the veracity of any claims the County might have. Rather, the Court need only recognize that the presumption on federal land is that ownership and management authority lies with the federal government and that any adverse claimant, like the County here perhaps, is not entitled to win title or exercise unilateral management authority until it successfully has carried its burden of proof in a court of law.

(Pls.' Mem. in Opp'n at 13-14.) This is not an action against the State of Utah, but an action against the County, which is not, by itself, entitled to sovereign immunity. The County's motion to dismiss based on the ground of sovereign immunity is denied.

3. Indispensable Party

The County also contends that the State of Utah is an indispensable party. The court disagrees.

Underlying the County's contention is the assumption that the State of Utah has an interest in this suit because TWS allegedly is attempting to strip the State of Utah's legal interest in R.S. 2477 rights-of-way on federal lands in the County. The County, however, presents no evidence that the County or State of Utah has any established R.S. 2477 rights on the federal lands in question. Absent such evidence, the County cannot carry its burden under Rule 19 to prove that the State of Utah is a necessary, much less indispensable, party. See Rishell v. Jane Phillips Episcopal Memorial Med. Ctr., 94 F.3d 1407, 1411 (10th Cir. 1996) (party seeking dismissal on ground that absent party is indispensable bears burden of persuasion). Furthermore, TWS's complaint does not necessarily implicate title in any R.S. 2477 right-of-way. And even if the State of Utah's interests would somehow be impaired by TWS's suit, joinder is not required

where the County for all practical purposes fully represents the State of Utah's interests. See, e.g., Kansas v. United States, 249 F.3d 1213, 1227 (10th Cir. 2001) (finding potential for prejudice "largely nonexistent" where interests of parties to litigation were "substantially similar, if not identical" to those of absent party, and therefore rejecting absentee's case that it was necessary and indispensable party); Sac & Fox Nation of Missouri v. Norton, 240 F.3d 1250, 1259 (10th Cir. 2001) (rejecting contention that absentee was indispensable party where existing party's "interest in defending his determinations [was] 'virtually identical' to the interests of the [absentee]").

For the foregoing reasons, the County's motion to dismiss for failure to join an indispensable party is denied.

4. Utah Governmental Immunity Act

The County also contends that it is protected from this lawsuit by the Utah Governmental Immunity Act (UGIA). This argument requires little analysis because the law is well settled that a state immunity statute cannot protect conduct that is alleged to be a constitutional violation. "To the extent that the [Utah] law of sovereign immunity reflects a substantive disagreement with the extent to which governmental entities should be held liable for their constitutional violations, that disagreement cannot override the dictates of federal law." Ambus v. Granite Bd. of Educ., 995 F.2d 992, 995 (10th Cir. 1993) (quoting Howlett v. Rose, 496 U.S. 356, 377-78 (1990)). See also Felder v. Casey, 487 U.S. 131, 146-53 (1988) (holding that state notice-of-claim statute did not apply to § 1983 civil rights claim); Barney v. Gillespie, 813 F. Supp. 1537, 1547 (D. Utah 1993) ("the Utah Governmental Immunity Act notice requirement is not a bar to plaintiffs' federal claims" under § 1983) (citing Felder v. Casey, 487 U.S. 131 (1988)); Bennett

v. Bow Valley Dev. Corp., 797 P.2d 419, 424 (Utah 1990) (holding that Utah Governmental Immunity Act did not apply to constitutional takings claim under self-executing provision of Utah Constitution or Fifth Amendment of the United States Constitution). Moreover, if the court were to accept the County’s assertion of immunity under the UGIA, such a holding would be completely contrary to the established federal rule that the Eleventh Amendment only provides immunity to states, not lesser entities like the County. Alden, 527 U.S. at 756. There is simply no merit to the County’s assertion. Because TWS alleges that the County has violated the Supremacy Clause of the United States Constitution, the UGIA is plainly inapplicable here.

5. TWS’s Standing

The County takes the position that TWS has no Article III or prudential standing to bring this action. To establish Article III standing, TWS must show an “injury in fact,” a “causal connection between the injury and the conduct complained of,” and the likelihood that a favorable ruling would redress the injury. Colorado Envtl. Coalition v. Wenker, 353 F.3d 1221, 1234 (10th Cir. 2004).

In response to the County’s assertion that TWS has not established Article III standing, TWS points to various member declarations stating that the TWS members have an interest in, and use and enjoy, federal public lands in Kane County that will be harmed by the increased ORV use permitted by the County’s actions. TWS’s members state that they will refrain from using areas where increased ORV use can occur and, to the extent they do revisit the areas, their conservation, aesthetic, and other interests will be harmed. These statements plainly satisfy the injury prong of the standing test.

The County argues that TWS “cannot challenge the existence of these public roads”

because they “have failed to assert that they, or their members, own a property interest in either the federal lands . . . or an interest in . . . Kane County’s roads.” (Defs.’ Mot. to Dismiss at 37-38.) The County is apparently referring to the fact that TWS allegedly would lack standing to bring a Quiet Title Act claim to resolve a title dispute on the challenged routes. The court disagrees because, as noted above, TWS is not seeking to quiet title in itself or any other entity.

As for the causal connection requirement, TWS’s injury is directly traceable to the County’s actions in opening up lands to ORV use that were closed to such use by federal land managers. According to TWS, the BLM and other federal land management agencies closed those routes and areas to ORVs precisely because they concluded that ORVs would cause environmental damage on those lands. TWS has established a sufficient connection between the injury and the conduct that TWS seeks to have declared invalid and enjoined. For the same reasons, TWS’s injury is redressable by the court.

The County’s contention regarding TWS’s prudential standing overlooks the fact that TWS need not show prudential standing in this case. “[A]n entity does not need prudential standing to invoke the protection of the Supremacy Clause[.]” Pharmaceutical Research & Mfrs. of America v. Concannon, 249 F.3d 66, 73 (1st Cir. 2001), aff’d sub nom. Pharmaceutical Research & Mfrs. of America v. Walsh, 538 U.S. 544 (2003); see also Taubman Realty Group Ltd. P’ship v. Mineta, 320 F.3d 475, 481 n.3 (4th Cir. 2003) (plaintiff “does not have to meet the additional standing requirement involving the zone of interests test with respect to its Supremacy Clause claim against the County”); St. Thomas–St. John Hotel & Tourism Ass’n v. Gov’t of the U.S. Virgin Islands, 218 F.3d 232, 241 (3d Cir. 2000) (“We know of no governing authority to the effect that the federal statutory provision which allegedly preempts enforcement of local

legislation by conflict must confer a right on the party that argues in favor of preemption.”). This is so because when a preemption-based challenge is brought under the Supremacy Clause, it is the interests protected by the Supremacy Clause, not those protected by the preempting statute, that are at issue. Because the plaintiffs in a Supremacy Clause suit seek to uphold the primacy of federal law – the very purpose of the Supremacy Clause – there is no need for them to fulfill any additional prudential standing test.

For the foregoing reasons, TWS has standing to bring its claims.²

B. Plaintiffs’ Motion to Amend the Complaint

TWS filed a Motion to Amend the complaint to add a claim under the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq., against the BLM and U.S. Fish and Wildlife Service (FWS) based on the same set of facts alleged in the original complaint. The BLM and FWS are not currently defendants. TWS does not seek to add any claims against the County.

Leave to amend a complaint shall be freely granted when justice so requires. Fed. R. Civ.

P. 15(a). Indeed, denial of leave to amend is justified only in limited circumstances:

In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be “freely given.”

Foman v. Davis, 371 U.S. 178, 182 (1962) (emphasis added).

The County opposes the motion to amend on the ground that granting such an amendment

²The County alleges that TWS’s claims are not ripe. But TWS challenges County actions that have occurred, are completed, and have ongoing impacts. Consequently, TWS’s Supremacy Clause claims are ripe for review.

would be futile, and, in support of its opposition, the County repeats the arguments presented in its Motion to Dismiss. The County provides no other reason for denial. Because the court has denied the County's Motion to Dismiss, and because no valid reason has been given for denying the request to amend, the Plaintiffs' Motion to Amend is GRANTED.

ORDER

For the foregoing reasons, the Defendants' Motion to Dismiss is DENIED. Plaintiffs' Motion to Amend the Complaint is GRANTED.

DATED this 24th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

FILED
U.S. DISTRICT COURT
2006 AUG 24 A 10:16
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD DAVID SPERRY,

Defendant.

BY: RECEIVED
ORDER TO CONTINUE
JURY TRIAL

Case No. 2:06-CR-063 TC

AUG 18 2006

OFFICE OF
JUDGE TENA CAMPBELL

Based on the motion to continue trial filed by Defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the 4-day trial previously scheduled to begin September 5, 2006, is hereby continued to this 30 day of October, 2006, at 8:30 a.m. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the Defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth in paragraph one above is excluded from speedy trial computation.

Dated this 21 day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Court Judge

UNITED STATES DISTRICT COURT

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

Central

District of

AUG 24 2006

UNITED STATES OF AMERICA

V.

BRAD ROBERT HAMMOND

JUDGMENT IN A CRIMINAL CASE

BY MAURICE ZIMMER, CLERK
DEPUTY CLERK

Case Number: DUTX206CR000103-001

USM Number: 02195-081

Chelsea Koch

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g)(1)	Possession of Firearm and Ammunition by a Convicted Felon		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 2, 3 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/22/2006

Date of Imposition on Judgment

Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

Date

8/24/06

DEFENDANT: BRAD ROBERT HAMMOND
CASE NUMBER: DUTX206CR000103-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The RDAP program and a facility where UNICOR is available including Sheridan, Oregon or Lompoc, California.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRAD ROBERT HAMMOND
CASE NUMBER: DUTX206CR000103-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: BRAD ROBERT HAMMOND
CASE NUMBER: DUTX206CR000103-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
2. The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed.
3. The defendant shall submit person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: BRAD ROBERT HAMMOND
CASE NUMBER: DUTX206CR000103-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0.00	\$ _____ 0.00
--------	---------------	---------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BRAD ROBERT HAMMOND
CASE NUMBER: DUTX206CR000103-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 24 2006

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

JAMES D. GILSON (5472)
CALLISTER NEBEKER & McCULLOUGH
Gateway Tower East Suite 900
10 East South Temple
Salt Lake City, UT 84133
Telephone: (801) 530-7300
Facsimile: (801) 364-9127

Attorneys for Defendant Lance W. Mercer

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LANCE W. MERCER,

Defendant.

**AMENDED SCHEDULING
ORDER**

Case No. 2:06cr00161 PGC

Judge Paul G. Cassell
Magistrate Judge David O. Nuffer

Having considered the Stipulated Motion to Amend Scheduling Order, and good cause appearing therein,

IT IS HEREBY ORDERED that the motion cutoff date in this matter is changed from August 21, 2006 to September 11, 2006 and the September 21, 2006, 3:00 p.m. hearing date is vacated. The plea cutoff date remains at October 16, 2006, as does the three day trial setting beginning on December 11, 2006, and the final pretrial conference on November 30, 2006 at 3:00 p.m.

Dated: August 24, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. G. Cassell', written over a horizontal line.

Paul G. Cassell
United States District Judge

AGREED AS TO FORM:

CALLISTER NEBEKER & McCULLOUGH

/s/ James D. Gilson

James D. Gilson

Attorney for Defendant

UNITED STATES OF AMERICA

By /s/ Christopher S. Strauss

Attorney for Plaintiff

(signed copy of document bearing signature
of Christopher S. Strauss is being maintained in
the office of filing attorney)

CERTIFICATE OF SERVICE

This is to certify that I served a true copy of the foregoing [proposed] **AMENDED SCHEDULING ORDER** this 17th day of August, 2006 via the court's electronic mail service to the following:

Christopher S. Strauss
christopher.s.strauss@usdoj.gov

D. Loren Washburn
loren.washburn@usdoj.gov

/s/ James D. Gilson

S. AUSTIN JOHNSON
Attorney at Law
345-B East University Pkwy.
Orem, UT 84058
(801) 426-7900

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 23 2006

MARKUS B. ZIMMER, CLERK
BY
DEPUTY CLERK

RECEIVED CLERK

AUG 23 2006

U.S. DISTRICT COURT

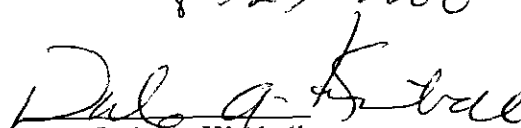
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:06 CR 235
Plaintiff,	:	ORDER
vs.	:	
CARLOS ALBERTO SIMONETTI, Jr.	:	Hon. Dale A. Kimball
Defendant.	:	

THIS MATTER coming before the Court on the Motion for a Pre-Plea Presentence Report, the Court being fully apprised in the premises, both parties concurring in this request, and finding good cause;

IT IS HEREBY ORDERED, that U.S. Probation shall proceed with preparation of the Presentence Report in this matter.

IT IS SO ORDERED.

8-23-2006

Hon. Dale A. Kimball
U.S. District Court Judge

FILED
U.S. DISTRICT COURT

2006 AUG 23 P 3: 07

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RECEIVED

AUG 14 2006

OFFICE OF
JUDGE TENA CAMPBELL

EARL XAIZ, #3572
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320
Fax: (801) 364-6026

**IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRET JAY HANSEN,

Defendant.

**ORDER ALLOWING WITHDRAWAL
AS COUNSEL**

Case No. 2:06-CR-00517TC

Judge Tena Campbell

Based upon Motion of counsel and good cause appearing therefore;

IT IS HEREBY ORDERED that Earl Xaiz and the law firm of YENGICH, RICH & XAIZ are hereby allowed to withdraw from representation of the Defendant, Bret J. Hansen, in connection with the above-entitled matter.

SIGNED BY MY HAND this 23RD day of August, 2006.

Tena Campbell

TENA CAMPBELL
United States District Court Judge

FILED
U.S. DISTRICT COURT

2006 AUG 23 P 3:01

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RECEIVED

AUG 14 2006

OFFICE OF
JUDGE TENA CAMPBELL

EARL XAIZ, #3572
YENGICH, RICH & XAIZ
Attorneys at Law
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320
Fax: (801) 364-6026

**IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRET JAY HANSEN,

Defendant.

**ORDER TO REMOVE
COUNSEL FROM MAILING
CERTIFICATE**

Case No. 2:06-CR-00517TC

Judge Tena Campbell

Based on Motion of Counsel and good cause appearing, now therefore;

IT IS HEREBY ORDERED that attorney Earl Xaiz is removed from the mailing certificate in the above-entitled matter.

RESPECTFULLY SUBMITTED th 23RD day of August, 2006.

Tena Campbell

FILED
U.S. DISTRICT COURT

BRETT L. TOLMAN, United States Attorney, (#8821)
DUSTIN B. PEAD, Assistant United States Attorney, (#8251)
BRETT R. PARKINSON, Assistant United States Attorney, (#10310)
GREGORY C DIAMOND, Assistant United States Attorney, (#0878)
Attorneys for the United States of America
185 South St. Street, #400
Salt Lake City, Utah 84111
Telephone: 801-524-5682
Facsimile: 801-524-4475

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:06CR550PGC
Plaintiff,	:	ORDER PURSUANT TO
	:	TITLE 18 U.S.C. § 3161, <i>et seq.</i>
vs.	:	
HOA THANH VO, et al.	:	Magistrate Judge Samuel Alba
Defendants.	:	Judge Paul G. Cassell

This matter came before the Court for status hearing regarding discovery and timing of discovery on August 23, 2006, at 9:00 a.m. This hearing was requested by the Court at the time of the defendants' initial appearance and based upon representations of voluminous discovery by the United States at that hearing. Since the date of the initial appearance on August 8, 2006, the United States has filed a memorandum delineating the quantity of discovery, the status of discovery and suggesting various options for proceeding with discovery. Having heard the representations of counsel and being familiar with the file herein, the Court finds as follows:

1. This matter has voluminous discovery consisting of approximately 40 gigabytes of information, obtained by the United States prior to the date of defendants' arrest.
2. On the date of the defendants' arrest approximately 60 boxes of documentary evidence and approximately 15 computers were seized.
3. The United States has provided to all defendants a compact disc containing, generally, the reports of interviews of cooperating witnesses and all search warrant and seizure warrant documentation.
4. The United States will provide the approximately 40 gigabytes of material in a hard drive format which includes a hyperlinked index.
5. Providing the remaining 60 boxes of documents, evidence and information contained on the approximately 15 computer hard drives requires analysis of financial information, interpretation of information from the Vietnamese language and analysis with an eye toward determining the relevance of any information to the present case. While an exact prediction of time to accomplish this task is not presently possible, the time required will be substantial and will certainly be extensive taking into account due diligence on the part of the United States.
6. There exists a lack of certified Vietnamese interpreters to assist the defendants and their counsel in the interviewing process and in the review of the discovery which has been and which will be provided to them. This complex process of discovery review and interviews will be extensive and very time consuming, taking into account the exercise of due diligence by all of the defendants and their counsel. It is specifically noted that there are 24 defendants herein many of whom have requested

the use of interpretative services while in court.

7. Failure to grant substantial additional time to complete analysis, interpretation, recordation, and review of discovery, as described herein, is unreasonable, given the expectation of adequate pre-trial preparation and the time limits established in Title 18 U.S.C. § 3161, *et seq.* This case is found to be very unusual and very complex given the number of defendants, the large amount of discovery, the problems created by language barriers, and the need for interpretation and translation services both in and out of court. It also presents novel questions of fact and law relating to electronic delivery of the voluminous discovery.
8. To deny substantial additional time, recognized as necessary herein, would deny counsel, the defendants, the United States, and the public, the reasonable time necessary and expected in the judicial system to adequately and effectively prepare this case, taking in to account the exercise of due diligence by everyone concerned.
9. The ends of justice are best served by excluding from Speedy Trial Act computation the time necessary for the defendants' to review discovery and for the government to determine the extent of additional discovery to be provided.

Based upon the foregoing, it is hereby ORDERED:

1. By September 24, 2006, all defendants will provide a proposed budget of expenses.
2. A status hearing is hereby set for December 4, 2006, at 9:00 a.m., where defendants are to provide a report to this Court of the progress of discovery review.


The United States will provide a report of where, when and how discovery obtained on the

date of arrest is to be provided. This report is related to the approximately 60 boxes of documents in evidence and the information contained on the approximately 15 computer hard drives which were seized by the United States on the date of arrest.

3. All time from the initial appearance on August 8, 2006, up through and including the status hearing of December 4, 2006, is excludable and is hereby excluded from any calculation required by the Speedy Trial Act. See Title 18 U.S.C. § 3161 (h)(8)(A) and (B).

Dated this 27th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Sam Alba', written over a horizontal line.

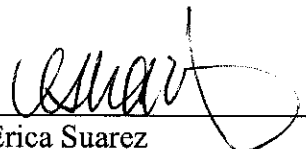
Sam Alba
Magistrate Judge

Certificate of Service

I certify that on the 24th day of August, 2006, I caused to be sent, via first class mail, postage prepaid, a copy of the foregoing ORDER PURSUANT TO TITLE 18 U.S.C. § 3161, *et seq.* to the following:

Lynn Donaldson 46 W. Broadway #110 Salt Lake City, UT 84101 (Counsel for Hoa Thanh Vo)	Rich Mauro 43 E. 400 S. Salt Lake City, UT 84111 (Counsel for Henry Ngoc Ngyen)	Ed Wall 8 East Broadway #500 Salt Lake City, UT 84111 (Counsel for Buu Van Troung)
James Valdez 466 S. 400 E. #200 Salt Lake City, UT 84111 (Counsel for Ngoc Hoa Huynh)	Ron Fujino 356 E. 900 S. Salt Lake City, UT 84111 (Counsel for Huu Luong Huynh)	Bel Ami de Montreux 370 East South Temple, Suite 350 Salt Lake City, UT 84111 (Counsel for Danh Huy Do)
James Garrett 2091 E. 1300 S. #201 Salt Lake City, UT 84108 (Counsel for James McClurg)	Julie George 29 S. State Street, #007 Salt Lake City, UT 84111 (Counsel for Tihn Huu Cao)	Jeremy Delicino 10 W. Broadway #650 Salt Lake City, UT 84101 (Counsel for Dzung Tan Huynh)
Todd Utzinger 563 S. Main, 2 nd Floor Bountiful, UT 84010 (Counsel for My Chau Tran)	Randy Ludlow 185 S. State St., #208 Salt Lake City, UT 84111 (Counsel for Hue Thi Huynh)	Ron Yengich 175 E. 400 S., #400 Salt Lake City, Utah 84111 (Counsel for Tri Dung Minh Nguyen)
Scott Williams 43 E. 400 S. Salt Lake City, UT 84111 (Counsel for Mischelle Polish)	Roger Scowcroft 39 Exchange Place #200 Salt Lake City, UT 84111 (Counsel for Cuc Thi Nguyen)	Candace Johnson 10 W. Broadway #210 Salt Lake City, UT 84101 (Counsel for Thi Tho Nguyen)

Michael P. Studebaker 2550 Washington Blvd #331 Ogden, Utah 84401 (Counsel for Gary Minh Nguyen)	Robin Ljungberg 424 E. 500 S. #300 Salt Lake City, UT 84111 (Counsel for Johnathan Quy Tran)	Ben Hamilton 356 E. 900 S. Salt Lake City, UT 84111 (Counsel for Winona Fischer)
Joshua Bowland 8 East Broadway, Suite 500 Salt Lake City, UT 84111 (Counsel for Dung Lee)	Mark Gregersen 3855 S. 500 W. #M South Salt Lake, UT 84115 (Counsel for Hieu Dinh Hoang)	Steve McCaughey 10 W. Broadway #650 Salt Lake City, UT 84101 (Counsel for Tamy Ta)
Mike Jaenish 150 S. 600 E. #5C Salt Lake City, UT 84102 (Counsel for Yen Thi Pham)	Ed Montgomery 42 Exchange Place Salt Lake City, UT 84111 (Counsel for Lahn Ta Huynh)	


 Erica Suarez

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

2006 AUG 23 P 3:07

CENTRAL DIVISION

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

DALE STEVENS,

Plaintiff,

vs.

CLARK A. McCELLAN,

Defendant.

ORDER OF REFERENCE

Civil No. 2:06 CV 215 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this court, the above entitled case is referred to United States Magistrate Judge Paul M. Warner. Judge Warner is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 23rd day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

FILED
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

2006 AUG 24 A 10: 20

DISTRICT OF UTAH

Park City Group, Inc.,
Plaintiff

v.

Workbrain, Inc.,
Defendant

BY: _____
DEPUTY CLERK

: ORDER FOR PRO HAC VICE ADMISSION

: Case Number 06cv289

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Matthew Phillips in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 24th day of August 2006.



U.S. District Judge

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
J.S. DISTRICT COURT
CENTRAL DIVISION

2006 AUG 24 A 10:23

JOHN R. HEINLEIN,

)

Case No. 2:06CV00303 DS

BY:

DEPUTY CLERK

Plaintiff,

)

vs.

)

O R D E R

REGENCE BLUECROSS BLUESHIELD
OF UTAH,

)

Defendant.

Pursuant to Fed. R. Civ. P. 16(b), the Attorneys' Planning
Meeting Report filed by counsel, and good cause appearing,

IT IS HEREBY ORDERED:

The times and deadlines set forth in the Attorneys' Planning
Meeting Report filed with the Court are adopted by the Court and
incorporated herein by reference. A final pretrial conference will
be held April 3, 2007 at 2:30 p.m. A 2 day Jury Trial will be held
beginning April 17, 2007 at 8:30 a.m.

DATED this 23rd day of August, 2006.

BY THE COURT:

David Sam

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION **AUG 24 2006**

Grandway Honduras et al

Plaintiff,

vs.

Two's Company

Defendant.

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

ORDER TO SHOW CAUSE

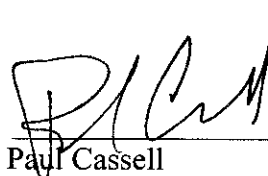
Case No. 2:06-cv-00323 PGC

Plaintiff is hereby ordered to show cause why the above captioned case should not be dismissed, with prejudice, as service of process has not been completed within 120 days as required by Rule 4(m) of F.R.C.P. The file indicated no activity since 04/17/2006.

Plaintiff is directed to respond in writing within 15 days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 24th day of ^{August} ~~August~~, 2006.

By



Paul Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

NAFEP MANAGEMENT CO. INC., a Nevada
Corporation,

Plaintiff,

v.

ROBERT J. BINKELE, and CURTIS A.
WYATT,

Defendants.

ORDER GRANTING MOTION TO AMEND

Case No. 2:06-CV-369 TS

District Judge Ted Stewart

Magistrate Judge David Nuffer

The complaint in this action was filed May 5, 2006, and Plaintiff seeks leave to amend to allege additional tortious conduct by defendants. Leave to amend shall be freely given when justice requires. Fed R. Civ. P. 15(a). Only defendant Binkele objects to the amendment. (docket no. 14) He claims that the jurisdictional objections in his motion to dismiss (docket no. 2) should be resolved before amendment is permitted and that the new claims are subject to an arbitration clause. Plaintiff responds that defendant Binkele disputes the existence of the agreement containing the arbitration clause and Plaintiff also claims that its new claims – or at least parts of them -- are outside the arbitration clause. Those issues will be best addressed after pleadings are joined and they could be joined before the hearing on the motion to dismiss set for hearing October 10th. (docket no. 12) The district judge might then, if he chooses, deal with all the jurisdictional and arbitration issues at once.

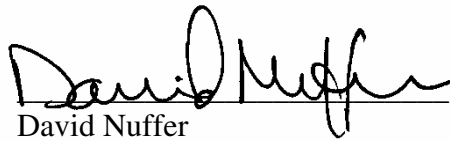
ORDER

IT IS HEREBY ORDERED that the motion to amend (docket no. 10) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff shall forthwith file the amended complaint, and defendant shall file any motion or responsive pleading within twelve days thereafter. Any response to the motion shall be filed five (5) days after such a motion is filed, and any reply shall be filed within four (4) business days of the response.

Dated this 24th day of August, 2006.

BY THE COURT

A handwritten signature in black ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Annette Childs,

Plaintiff,

vs.

Liberty Life Assurance Co.,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:06-cv-499 TS

District Judge Ted Stewart

Magistrate Judge David Nuffer

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for October 11, 2006, at 1:30 p.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>9/13/06</u> |

2. DISCOVERY LIMITATIONS: The parties do not anticipate the need to conduct discovery in that the scope of the Court's review will be limited to the materials found in the pre-litigation administrative appeal of the denial of Plaintiff's claim.

NUMBER

- | | | |
|----|--|-----------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | |
| f. | Maximum requests for production by any Party to any Party | |

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>P 10/20/06</u> <u>D 11/17/06</u>
b. Last Day to File Motion to Add Parties	<u>P 10/20/06</u> <u>D 11/17/06</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>9/13/06</u>
b. Defendant	<u>9/13/06</u>
c. Counter reports	
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>12/15/06</u>
Expert discovery	
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>1/19/07</u>
c. Deadline for filing dispositive or potentially dispositive motions	<u>2/2/07</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	<u>Yes/No</u>
b. Referral to Court-Annexed Arbitration	<u>Yes/No</u>
c. Evaluate case for Settlement/ADR on	<u>9/13/06</u>
d. Settlement probability:	<u>fair</u>
7. TRIAL AND PREPARATION FOR TRIAL:	
a. Rule 26(a)(3) Pretrial Disclosures ⁴	
Plaintiff	4/27/07
Defendant	5/11/07
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	
c. Special Attorney Conference ⁵ on or before	5/25/07
d. Settlement Conference ⁶ on or before	6/8/07

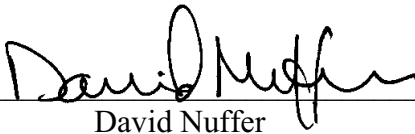
e.	Final Pretrial Conference		<u>2:30 p.m.</u>	<u>6/22/07</u>
f.	Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
	i. Bench Trial	<u>2 days</u>	<u>8:30 a.m.</u>	<u>7/2/07</u>
	ii. Jury Trial			

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 22nd day of August, 2006.

BY THE COURT:


 David Nuffer
 U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

Anthony C. Kaye (#8611)
Casey M. Adams (#10702)
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2215
Telephone: (801) 531-3000
Facsimile: (801) 531-3001

Attorneys for Plaintiff Neways, Inc.

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
AUG 22 2006
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

**NEWAYS, INC., a Utah corporation,
Plaintiff,**

vs.

**AMERICAN HEALTH AND DIET
CENTERS, INC., a Delaware corporation,
Defendant.**

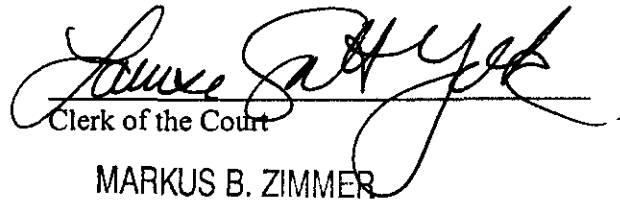
**CERTIFICATE OF DEFAULT OF
DEFENDANT**

Case No. 2:06-cv-515

Honorable Judge Bruce S. Jenkins

DEFENDANT AMERICAN HEALTH AND DIET CENTERS, INC., having been served with the Complaint as evidenced by the Summons, filed with the Court on June 27, 2006, and having failed to appear, answer or otherwise respond to the Complaint, and the time allowed by law having expired, the Clerk of the Court hereby enters the default of DEFENDANT AMERICAN HEALTH AND DIET CENTERS, INC.

DATED this 22nd day of August 2006.


Clerk of the Court
MARKUS B. ZIMMER

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2006 AUG 24 AM 13

DISTRICT OF UTAH

SHAWN ALLRED,)
)
Plaintiff,) Case No. 2:06-CV-555 TC
)
v.) District Judge Tena Campbell
)
BRYCE K. BRYNER et al.,) O R D E R
)
Defendants.) Magistrate Judge Samuel Alba

BY: DEPUTY CLERK

Plaintiff, Shawn Allred, moves for an extension of time in which to comply with the Court's July 10, 2006, order that he file with the Court within thirty days a certified copy of his inmate trust fund account statements covering the dates between February 15, 2006 and May 27, 2006.

At this point, Plaintiff has already had additional days in which to comply. However, IT IS HEREBY ORDERED that Plaintiff's motion for a time extension is granted. If Plaintiff does not submit his inmate account statements by September 15, 2006, his case will be dismissed.

DATED this 24th day of August, 2006.

BY THE COURT:



SAMUEL ALBA
United States Chief Magistrate Judge

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DISTRICT OF UTAH

BY: DEPUTY CLERK

SHAWN ALLRED,)	
)	
Plaintiff,)	Case No. 2:06-CV-581 TC
)	
v.)	District Judge Tena Campbell
)	
DR. BRUCE BURNHAM et al.,)	O R D E R
)	
Defendants.)	Magistrate Judge Samuel Alba

Plaintiff, Shawn Allred, moves for an extension of time in which to comply with the Court's July 13, 2006, order that he file with the Court within thirty days a certified copy of his inmate trust fund account statements covering the dates between February 15, 2006 and May 27, 2006, and June 16 through June 30, 2006.

At this point, Plaintiff has already had additional days in which to comply. However, IT IS HEREBY ORDERED that Plaintiff's motion for a time extension is granted. If Plaintiff does not submit his inmate account statements by September 15, 2006, his case will be dismissed.

DATED this 24th day of August, 2006.

BY THE COURT:



SAMUEL ALBA
U. S. Chief Magistrate Judge

FILED
U.S. DISTRICT COURT

2006 AUG 24 A 10: 20

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH – CENTRAL DIVISION

BY: DEPUTY CLERK

ALAN LERWICK,

Plaintiff,

vs.

JAN LERWICK and CORPORATION OF
THE PRESIDING BISHOP OF THE
CHURCH OF JESUS CHRIST OF LATTER-
DAY SAINTS,

Defendants.

ORDER

Case No. 2:06CV00616

Judge Dee Benson

Plaintiff Alan Lerwick filed a complaint pursuant to 42 U.S.C. § 1985 on July 25, 2006.
For the reasons stated below, Mr. Lerwick's suit is hereby DISMISSED.

BACKGROUND

On January 11, 2006, Alan Lerwick filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Jan Lerwick and the Security Department of the Salt Lake LDS Temple. The complaint stemmed from an incident that occurred on December 13, 2003, in which Mr. Lerwick encountered his ex-wife, Jan Lerwick, in the Salt Lake Temple. Their daughter was getting married in the temple that day and Mr. Lerwick hoped to talk with her. When Ms. Lerwick saw him, however, she produced a protective order against Mr. Lerwick to temple security and Mr. Lerwick was escorted from the premises.

In Mr. Lerwick's January 11, 2006 complaint, he alleged that his first amendment rights were violated when "Jan Lerwick brought Protective Order to Salt Lake LDS temple on 13 Dec

2003 and when it was found that I (plaintiff) was in the temple, she had temple security remove me by escort. Basis for temple security's action was entirely based upon the protective order and not upon my behavior." See January 11, 2006 Complaint. Because of his ex-wife's and temple security's actions, Mr. Lerwick alleged: "My valid LDS temple recommend was invalidated by protective order for 13 Dec 2003 and I was escorted off LDS temple grounds by two temple security men. I also suffered mental and emotional pain because of this action by both Jan Lerwick and Salt Lake LDS temple security. *Id.*

On February 7, 2006, Magistrate Judge Alba issued a Report and Recommendation recommending that Mr. Lerwick's complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failing to state a claim on which relief may be granted. Magistrate Alba concluded:

Because Plaintiff's complaint fails to allege any facts purporting to establish that either defendant was acting under color of state law, the complaint fails to state a claim against either defendant under Section 1983. Furthermore, Defendant temple security/CPB's motion to dismiss explains that it is a private entity, and therefore allowing *pro se* Plaintiff the opportunity to amend his complaint would not cure this deficiency in his complaint. As a result, Plaintiff's claim fails to state a claim on which relief may be granted, and the court must dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

See Report and Recommendation. On March 8, 2006, Judge Campbell issued an Order adopting Magistrate Alba's Report and Recommendation.

On July 26, 2006, Mr. Lerwick filed another complaint against Jan Lerwick and the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints based on the December 13, 2003 incident. In this complaint, Mr. Lerwick alleges the actions taken by Ms.

Lerwick and temple security on December 13, 2003 constitute a civil conspiracy violating 42

U.S.C. § 1985. More specifically, Mr. Lerwick alleges:

I was in the Salt Lake LDS temple the morning of 13 Dec 2003 doing Baptisms for the Dead and was planning to continue with temple attendance/worship and go through an Endowment Session after I found out if I could speak to my daughter and her fiancé who were to be married that same day. I was told to wait out in the hall because Temple Security wanted to speak to me, as I knew that I had done nothing wrong it came to me as a surprise that they were to escort me off LDS Church property because of the Protective Order that my ex-wife Ms. Jan Lerwick brought with her to the temple that day. As well as because my ex-wife objected to my being there. I was told that I could go peaceably by Security escort or they would call the Police. I optioned to go peaceably by LDS Temple Security escort, in which I was escorted by two Security men out of the temple, south to the public sidewalk on South Temple Street and told not to come back at all that day (13 Dec 2003)....

I was prevented from continuing in participating in temple worship/attendance (I had just finished with participating in Baptisms for the Dead) and wanted to continue with attending an Endowment Session. Prevented by Salt Lake LDS Temple Security by virtue of "authorization" of Protective Order shown them by defendant Ms. Jan Lerwick. My valid Temple Recommend (signed and dated permission identification paper issued by The Church of Jesus Christ of Latter-day Saints for me to attend Temple services) was invalidated temporarily for 13 Dec 2003 by said Protective Order by actions of said defendants.

See Complaint. Because Mr. Lerwick's complaint is identical to his previously dismissed complaint, it must be dismissed.

ANALYSIS

Mr. Lerwick's action is barred by the doctrine of *res judicata*. "Under *res judicata*, or claim preclusion, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in the prior action." *Satsky v. Paramount Comm., Inc.*, 7 F.3d 1464, 1467 (10th Cir. 1993) (citation omitted). "Res judicata is

intended to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, prevent inconsistent decisions, and encourage reliance on adjudication.” *Id.* “A claim is barred by res judicata if three elements exist: (1) a final judgment on the merits in the prior suit; (2) the prior suit involved identical claims as the claims in the present suit; and (3) the prior suit involved the same parties.” *Id.*

In the present case, all three elements for claim preclusion are met. First, the dismissal of the previous suit constitutes a final judgment on the merits. The Court dismissed Mr. Lerwick’s original complaint because he failed to allege a violation of his first amendment rights upon which he could recover. The Court ruled that Mr. Lerwick failed to allege any facts purporting to establish that either defendant was acting under color of state law to violate his first amendment rights and therefore, he was not entitled to recover under § 1983. Mr. Lerwick now alleges that his ex-wife and the LDS temple security officers conspired to violate to his first amendment rights in violation of § 1985. Except for the statute he alleges the defendants violated, Mr. Lerwick’s present complaint is identical to his previously dismissed complaint. Both complaints stem from the same incident and set forth the same facts. The only discernible difference between the complaints is that Mr. Lerwick now alleges a civil conspiracy between his ex-wife and temple security.

Despite raising this new legal theory for recovery, the previous dismissal constituted a final judgment on the merits of Mr. Lerwick’s first amendment claims. The Tenth Circuit has ruled that “[i]nasmuch as the doctrine of res judicata precludes parties from relitigating issues that were *or could have been raised*, parties cannot defeat its application by simply alleging new

legal theories.” *Clark v. Haas Group, Inc.*, 953 F.2d 1235, 1238 (10th Cir. 1992) (citation omitted) (emphasis added). Mr. Lerwick cannot pursue a previously dismissed lawsuit under the guise of a different legal theory.

Similarly, the present suit involves claims identical to those in the previously dismissed suit. The Tenth Circuit has adopted the transactional approach to determine whether the prior suit involved identical claims to the present suit. *See Yapp v. Excel Corp.*, 186 F.3d 1222, 1227 (10th Cir. 1999). “The transactional approach provides that a claim arising out of the same transaction, or series of connected transactions as a previous suit, which concluded in a valid and final judgment, will be precluded. *Id.* “What constitutes the same transaction or series of transactions is to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.” *Id.*

Mr. Lerwick’s present suit involves a nearly identical claim to his previously dismissed suit. Both suits arise from the December 13, 2003 incident at the Salt Lake Temple. Both suits allege that his ex-wife and temple security violated Mr. Lerwick’s first amendment rights. Because the present suit stems from the same incident and alleges the same violation of first amendment rights as the previously dismissed suit, the Court finds that the identical claims requirement has been met.

Finally, the prior suit involved the same parties included in the present suit. In both lawsuits, Mr. Lerwick has named his ex-wife, Jan Lerwick, and LDS temple security as

defendants. The lone difference between the parties sued in each lawsuit arises from an error on Mr. Lerwick's part; in his previously dismissed lawsuit, Mr. Lerwick sued Jan Lerwick and the security department of the Salt Lake LDS Temple. The security department of the Salt Lake LDS Temple, however, does not exist and therefore cannot be named as a defendant. In his Report and Recommendation, Magistrate Judge Alba noted, "In addition, Defendant temple security has filed a motion to dismiss and supporting memorandum in which it explains that the proper defendant is the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints because no such entity exists that is called the Security Department of the Salt Lake LDS Temple." See Report and Recommendation. In the present suit, Mr. Lerwick corrected his error and sued Jan Lerwick and the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints. Because the parties in both lawsuits are identical, the final requirement for claim preclusion is met and Mr. Lerwick's suit must be dismissed.

CONCLUSION

For the reasons stated above, Mr. Lerwick's complaint is hereby DISMISSED.

IT IS SO ORDERED.

DATED this 23rd day of August, 2006.


Dee Benson
United States District Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central Division

District of

UTAH
2006 AUG 24 P 2:07

John A. Campbell

Plaintiff

V.

S.S. Administration et al

Defendant

ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES

CLERK OF DISTRICT COURT
DEPUTY CLERK

Judge Dee Benson

DECK TYPE: Civil

DATE STAMP: 08/24/2006 @ 14:08:40

CASE NUMBER: 2:06CV00704 DB

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

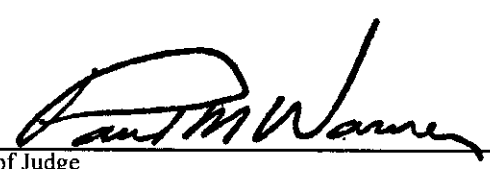
☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 24th day of August, _____.


Signature of Judge

Magistrate Judge Paul M. Warner

Name and Title of Judge

FILED
U.S. DISTRICT COURT

2006 AUG 24 A 10: 20

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH – CENTRAL DIVISION

DISTRICT OF UTAH

BY: DEPUTY CLERK

THE STATE OF UTAH, ex rel., MARK L.
SHURTLEFF, in his capacity as
ATTORNEY GENERAL OF THE STATE
UTAH

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO COMPANY,
et al.,

Defendants.

**ORDER GRANTING MOTION FOR
WITHDRAWAL OF COUNSEL**

Case No. 2:96CV829

Judge Dee Benson

Michael N. Zundel, having moved to withdraw as counsel and having shown good cause,
IT IS HEREBY ORDERED that Michael N. Zundel may withdraw as counsel of record for BAT
Industries and British American Tobacco in the case described above and is removed from the
service list of the same.

IT IS SO ORDERED.

DATED this 24th day of August, 2006.



Dee Benson
United States District Judge

K. S. Cornaby (USB #0731)
Michael J. Kelley (USB #5301)
JONES WALDO HOLBROOK & McDONOUGH PC
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

FILED
U.S. DISTRICT COURT

2006 AUG 24 A 11:12

DISTRICT OF UTAH

BY: DEPUTY CLERK

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

WESTERN DIVERSIFIED SERVICES, INC.,
an Illinois Corporation,

Plaintiff,

vs.

HYUNDAI MOTOR AMERICA, INC., a
California Corporation,

Defendant.

**POST REMAND SCHEDULING
ORDER AND ORDER VACATING
HEARING**

Civil No. 2:99CV0084

Judge: Dee V. Benson
Magistrate Judge: Samuel Alba

On April 27, 2006, Plaintiff's Motion For Post Remand Scheduling and Management Conference came on for hearing at 11:00 a.m. before the honorable Magistrate Judge Samuel Alba. Plaintiff was represented by Michael J. Kelley. Defendant was represented by Robert B. Golden and William H. Christensen. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Status Conference Hearing set for June 13, 2006, at 3:00 p.m. before the Honorable Judge Dee V. Benson is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses: Trademark

- | | | |
|----|--|---|
| a. | Was Rule 26(f)(1) Conference held? | <u>NA</u>
<u>(completed</u>
<u>prior to</u>
<u>appeal)</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>NA</u>
<u>(completed</u>
<u>prior to</u>
<u>appeal)</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>NA</u>
<u>(completed</u>
<u>prior to</u>
<u>appeal)</u> |

2.	DISCOVERY LIMITATIONS	<u>NUMBER</u>
a.	Maximum Number of post remand Depositions by Plaintiff(s)	<u>10</u>
b.	Maximum Number of post remand Depositions by Defendant(s)	<u>10</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>7</u>
d.	Maximum post remand Interrogatories by any Party to any Party	<u>25</u>
e.	Maximum post remand requests for admissions by any Party to any Party	<u>25</u>
f.	Maximum requests for post remand production by any Party to any Party	<u>25</u>

The limitations on discovery set forth herein shall be without prejudice to the right of either Party to assert any objection which the Party could otherwise assert, including, without limitation, that the requested discovery is cumulative and/or beyond the issues remaining post remand, provided the other Party shall have the right to challenge any such objection.

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES¹	
a. Last Day to File Motion to Amend Pleadings	<u>NA</u> <u>(expired prior to appeal)</u>
b. Last Day to File Motion to Add Parties	<u>NA</u> <u>(expired prior to appeal)</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS²	
a. Plaintiff	<u>11/30/06</u>
b. Defendant	<u>NA</u>
c. Counter reports	<u>12/31/06</u>
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>10/31/06</u>
Expert discovery	<u>01/31/07</u>
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>NA</u>
c. Deadline for filing dispositive or potentially dispositive motions	<u>02/28/07</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	<u>No</u>
b. Referral to Court-Annexed Arbitration	<u>No</u>
c. Evaluate case for Settlement/ADR on	<u>NA</u>
d. Settlement probability:	<u>Poor</u>

7. **TRIAL AND PREPARATION FOR TRIAL:** *Specify # of days for Bench or Jury trial as appropriate. Shaded areas will be completed by the court.*

a. Rule 26(a)(3) Pretrial Disclosures³

Plaintiff

July 6, 2007

Defendant

July 6, 2007

b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

July 16, 2007

DATE

c. Special Attorney Conference⁵ on or before

July 16, 2007

d. Settlement Conference⁶ on or before

July 16, 2007

e. Final Pretrial Conference

July 20, 2007
2:30 p.m.

f. Trial

Length

Time

Date

i. Bench Trial

days

ii. Jury Trial

7 days

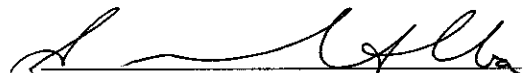
8:30 a.m., August 6-14,
2007

8. **OTHER MATTERS:**

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 23rd day of August, 2006.

BY THE COURT:


U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to the Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2(b) and 28 USC 636(b)(1)(A) or DUCivR 72-2(c) and 28 USC 636(b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2(b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. The identity of experts and the subject of their testimony shall be disclosed as soon as an expert is retained or, in the case of an employee-expert, as soon as directed to prepare a report.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.